

Thomas & Solomon LLP
THE EMPLOYMENT ATTORNEYS

March 6, 2023

VIA CM/ECF

Honorable Elizabeth A. Wolford
United States District Court
Western District of New York
100 State Street
Rochester, NY 14614

Re: Van Brunt-Piehler v. Absolute Software, Inc. et al.
Civil Action No. 16-cv-6313-EAW-MWP

Dear Judge Wolford:

Pursuant to the Court's ruling today regarding the admissibility of the employee survey (Plaintiff's Exhibit 67), plaintiff is submitting the attached as additional proposed designations to the deposition transcript of Daniel Berardo as Exhibit A.

Very truly yours,

/s/ Jonathan W. Ferris

Jonathan W. Ferris

cc: All counsel of record (via email)

Exhibit A

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF NEW YORK
4

5 MARY VAN BRUNT-PIEHLER,)
6 Plaintiff,)
7 v.) No. 16-cv-6313
8 ABSOLUTE SOFTWARE, INC.,) (EAW) (MWP)
9 ABSOLUTE SOFTWARE)
10 CORPORATION, GEOFF HAYDON,)
11 THOMAS KENNY, and TODD AWTRY)
12 Defendants.)
13 _____)
14
15
16

17 DEPOSITION OF DANIEL BERARDO

18 Vancouver, BC

19 Wednesday, May 8, 2019
20
21
22
23

24 Reported by:
JESSICA D. ARCHIBALD
25 JOB NO. 160294

Wednesday, May 8, 2019
10:58 a.m.

Deposition of DANIEL BERARDO, held at
the offices of DORSEY & WHITNEY LLP, 1095 West
Pender Street, Suite 1070, Vancouver, BC,
before Jessica D. Archibald, Official Reporter,
authorized to administer oaths in the province
of British Columbia.

A P P E A R A N C E S:

THOMAS & SOLOMON
Attorneys for Plaintiff
693 EAST AVENUE
ROCHESTER, NY 14607
BY: NELSON THOMAS, ESQ.,
via teleconference;

DORSEY & WHITNEY
Attorneys for Defendants
51 WEST 52ND STREET
NEW YORK, NY 10019
BY: MARK SULLIVAN, ESQ.,
LAURA LESTRADE, ESQ.

ALSO PRESENT:

Maninder Malli, Esq., Absolute Software
Mike Elderkin - videographer

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing and
sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, shall be reserved to the
time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be sworn to
and signed before any officer authorized
to administer an oath, with the same
force and effect as if signed and sworn to
before the Court.

- oOo -

D. Berardo

VIDEOGRAPHER: This is the start of
media number 1 in the video-recorded
deposition of Daniel Berardo in the matter
of Mary Van Brunt-Piehler versus Absolute
Software Incorporated et al. in the United
States District Court Western District of
New York. The case number is 16-cv-6313.
This deposition is being held at 1985 West
Pender Street, Vancouver, British Columbia,
Canada, on May 8th, 2019, at approximately
10:59 a.m.

My name is Mike Elderkin. I am the
legal video specialist from TSG Reporting
Incorporated headquartered at 747 3rd
Avenue, New York, New York. The court
reporter is Jessica Archibald, in
association with TSG Reporting.

Will counsel please introduce
yourselves.

MR. SULLIVAN: Mark Sullivan and
Laura Lestrade from Dorsey & Whitney on
behalf of the defendants. Also present in
the room is Maninder Malli, in-house
counsel for Absolute.

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MR. THOMAS: Nelson Thomas at Thomas & Solomon on behalf of the plaintiff, Mary Piehler.

VIDEOGRAPHER: Will the court --

MS. VAN BRUNT-PIEHLER: Mary Piehler, plaintiff.

VIDEOGRAPHER: Will the court reporter please swear in the witness.

DANIEL BERARDO,

called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. THOMAS:

Q. All right. Now that we're on the record, I just...

For the videographer, I just want to confirm that the audio coming in through the telephone is going in okay for the playback for the video here. Is that -- are we all -- are we all good with that?

VIDEOGRAPHER: Yes.

MR. THOMAS: Okay. Perfect. And then also, Mark, I just -- I know the

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deposition is occurring in Canada, but I -- we're under -- I assume we're all in agreement that we're using FRCP rules and American rules of procedure and all that stuff?

MR. SULLIVAN: Yes, we are.

MR. THOMAS: Okay. All right.

BY MR. THOMAS:

Q. Mr. Berardo, I'm Nelson Thomas, and I am the attorney representing Mary Piehler in this case. Have you ever given a deposition before?

A. I have not.

Q. Okay. What did you do to prepare for today's deposition?

A. We met with -- with Mark and Laura on Monday, and then a couple of months back, just when we weren't sure of when the deposition date would be, we also met for a few hours.

Q. Okay. And where was -- and I'm -- I'm having a little bit of trouble hearing you. Can you move the microphone closer to your...

A. Oh, sure.

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D. Berardo

Q. Or whichever -- I don't know where the...

MR. MALLI: Maybe just speak up a little bit.

THE WITNESS: Sure, yeah, I can speak up a little bit.

BY MR. THOMAS:

Q. Okay.

A. Okay.

Q. Great. Thank you. When you met with Laura a few months ago, where was that?

A. That was -- that was here at -- at their office.

Q. How long was the meeting on Monday?

A. It was three hours or just under.

Q. And the meeting back several months ago, what was -- how long was that?

A. I don't recall specifically.

Probably in the same neighbourhood, three to four hours.

Q. Did you review documents as part of that process?

A. We did, yes.

Q. What documents did you review?

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A. There were some emails and -- some emails. I think that's all I recall. I -- there was the --

Q. How many --

A. There was the --

Q. -- in total did you get?

A. I was going to say there was the -- also the -- a bit of the Absolute policy, a section of the Absolute policy. How many emails? Maybe 10 to 20 threads.

Q. Besides the 10 to 20 emails and the Absolute policies, did you review anything else?

A. Not that I recall off the top of my head right now.

Q. Tell me a little bit about your employment history before coming to Absolute.

A. Sure. Specific to HR? Or, I mean, how far do you want me to go back?

Q. Why don't -- let's just -- very quickly, where did you graduate high school?

A. Sure. I graduated high school in Burnaby, British Columbia, at a high school called "Alpha Secondary."

3 (Pages 6 to 9)

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D. Berardo

Q. What year was that?

A. 1997.

Q. Okay. And then did you attend college after that?

A. Yeah, I attended university at -- I graduated from Simon Fraser University, also in Burnaby, British Columbia.

Q. And what year was that?

A. I graduated in 2002.

Q. And what was your first full-time employment after graduation?

A. First full-time employment was an office coordinator-type job at a company called "Marsh" in Vancouver.

Q. And how long were you -- when did you start that job, and when did you end it?

A. So I started that job in 2002, and then I ended in two thousand and -- 2003.

Q. And what was your next position?

A. Then I went to Disney World, and I worked at Disney World for a year. Yeah.

Q. What did -- what did you do at Disney World?

A. I was a Canadian cultural

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representative, but, essentially, I was working at Epcot in the restaurant.

Q. Okay. Got it.

A. Yeah.

Q. Which -- what -- what country?

A. Canada.

Q. Okay.

A. Yeah.

Q. Okay. Very good. After -- after you were at Disney World, where did you go next?

A. So I went to -- briefly, at a company called "Willis." I was there just for a few months until I went back to Marsh.

Q. What did you do at Willis?

A. Same -- same -- it was an office-type job; filing, mailroom, reception.

Q. And then how long were you at Willis for?

A. It was just a few months. Just a few months before I went back to Marsh.

Q. And how long were you at Marsh?

A. I was at Marsh until 2006, so it was -- it was probably early 2005 -- early 2005 to September 2006.

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Q. And what was your position there?

A. Same type of position; office coordinator.

Q. All right. And then what was your next position?

A. So -- but I should say during this time, I was in -- I was also in school. I was in -- part-time taking a management certificate in human resources, so -- in 2005 through 2007. In 2006, I -- I moved to a company called "Radical Entertainment" in Vancouver.

Q. What do they do?

A. Video games.

Q. Okay. And what was your role there?

A. I was an HR -- HR coordinator. I started off as an HR coordinator.

Q. And how long were you at Radical Entertainment?

A. So I was there until the very end of 2010.

Q. And what was your next job after that?

A. So my -- my next job was at a company

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-- it was, again, only for a couple of months before I joined Absolute. It was a mining company. The -- the name escapes me for some reason. It was a mining company in Vancouver. I was there for two and a half years. It was called "Wardrop Engineering." Did I -- sorry, I -- I'm not sure I said -- I was there for two and a half months.

Q. Oh, okay. That's what I was going to ask. Okay.

A. I may have said years. It was months.

Q. Okay. It felt like two and a half years; right?

A. Yeah, it did.

Q. All right. Following that, you went to Absolute, and when was that?

A. That was June of 2011.

Q. And what was your role at Absolute?

A. So I started off in June 2011 as a senior HR generalist.

Q. And what was your next position?

A. So my next position -- so once the head of -- the head of HR left -- I want to

1 D. Berardo
2 say -- it was towards the end of 2012. So
3 when she left, I assumed the position of head
4 of HR. My technical -- or, sorry, my -- my
5 position was HR manager, and then subsequently
6 promoted to HR director at some point.

7 Q. And approximately when was that?

8 A. Promoted to HR director, probably
9 twenty -- 2014. Maybe mid-2014.

10 Q. And what was your next position?

11 A. So I just -- so I was an HR director
12 until I left Absolute Software.

13 Q. Let me just make sure that I have
14 this correct.

15 A. Sure.

16 Q. That you were a senior HR generalist
17 when you started in June of 2011; you became
18 an HR manager when the head of HR left in
19 2012; then you became head of HR; and then HR
20 director; and then you left in 2014?

21 A. Yeah, at the -- sorry, no, I left at
22 the very end of 2015. So December --

23 Q. 2015?

24 A. Yeah, the very end of 2015.

25 Q. Now, there was a complete turnover in

1 D. Berardo
2 HR between 2015 and 2016 --

3 MR. SULLIVAN: Objection.

4 BY MR. THOMAS:

5 Q. -- at Absolute; right?

6 MR. SULLIVAN: Objection to form.

7 THE WITNESS: No, there was a -- I
8 would say there -- there was a turnover
9 once I had left in 2016. Not -- not
10 during --

11 BY MR. THOMAS:

12 Q. What -- what prompted --

13 A. -- 2015.

14 Q. -- that? What prompted that?

15 A. My departure.

16 Q. And what -- what about your departure
17 prompted the turnover?

18 A. I -- I don't -- I don't know. I --
19 I'm not sure, just because I wasn't at
20 Absolute at that time.

21 Q. Were you -- were you in touch with
22 people who were at Absolute --

23 MR. SULLIVAN: Objection to form.

24 BY MR. THOMAS:

25 Q. -- in the HR department?

1 D. Berardo
2 A. I was, yeah. I had a few -- couple
3 people that I kept in touch with in the HR
4 department.

5 Q. What did they say to you about why --
6 what was happening?

7 MR. SULLIVAN: Objection to form.

8 THE WITNESS: I think they -- the new
9 head of HR, they -- you know, they just
10 weren't really getting along with her.

11 BY MR. THOMAS:

12 Q. Was that Amanda Mallow?

13 A. It was, yes.

14 Q. Why did you decide to leave Absolute?

15 A. I was head-hunted by a company in
16 Vancouver, and it was just a good next step in
17 my career.

18 Q. Now, when you were at Absolute, you
19 reported to the head of HR until -- and who
20 was the head of HR?

21 A. Oh, no, sorry, I -- oh, sorry, until
22 she left. Sorry. Her name was Leah Rubin.

23 Q. Okay.

24 A. Yes.

25 Q. And when you became HR manager, who

1 D. Berardo
2 did you report to?

3 A. I reported in to Errol Olsen.

4 Q. Okay. Did you report in to Errol
5 Olsen the entire time until you left?

6 MR. SULLIVAN: Objection to form.

7 THE WITNESS: From -- from what I
8 recall, yes.

9 BY MR. THOMAS:

10 Q. And when did you officially get the
11 title "head of HR"?

12 A. So I -- I guess I -- essentially, I
13 never had, officially, the title of "head of
14 HR." I was the head of HR, but -- but, again,
15 I was -- I was -- the first title was "HR
16 manager," and then I was subsequently promoted
17 to HR director.

18 Q. Oh, okay.

19 A. Yeah.

20 Q. So when you were -- so is it your
21 testimony that when you were HR manager, that
22 was the equivalent of head of HR?

23 MR. SULLIVAN: Objection to form.

24 THE WITNESS: I was leading the
25 department.

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BY MR. THOMAS:

Q. Okay. Did they conduct a search for a replacement for Leah Rubin when she departed?

A. Not that I recall.

Q. You just advanced into the position upon her departure?

A. Correct. I mean, I was, yeah, asked to -- to assume the role.

Q. How -- how did you feel about ABT -- how did you feel about Absolute sales culture under Thomas Kenny and Todd Awtry during the time that you were there?

MR. SULLIVAN: Objection to form.

THE WITNESS: Sorry, can you -- can you clarify? What -- what do you mean by how I felt about it? Like...

BY MR. THOMAS:

Q. What was your -- as an HR professional, what was your --

A. Sure.

Q. -- observation about how they were conducting themselves at the company?

A. Sure.

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MR. SULLIVAN: Objection to form.

THE WITNESS: Okay.

MR. THOMAS: And, Mark, what is your -- and just one second. I'm -- sorry to cut you off, Dan -- or Mr. Berardo.

Mark, what is your objection?

MR. SULLIVAN: It's calling for an opinion. It's also ambiguous.

BY MR. THOMAS:

Q. Well, let me make it clear, Mr. Berardo. I'm asking for your observations about what you saw in terms of Thomas Kenny and Todd Awtry's conduct from an HR perspective while they were at -- while you were at Absolute with them.

MR. SULLIVAN: Objection so form.

THE WITNESS: Sorry, and specifically when they first came in? Is that the time frame you're asking me about.

BY MR. THOMAS:

Q. Why don't we start there and go all the way through.

A. Sure. Okay. So -- so I -- so, previously, I -- I don't think that we --

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Absolute had -- or, to my knowledge, had a sales organization that was led by people that had come from a larger company, a larger corporation. So I saw them coming in and putting in some -- some more -- or some more professional ways of -- professional ways of conducting -- you know, running the sales organization. Kind of that was my -- that was my observation, is that they were -- is that they were trying to advance the sales organization to be a bit more of a professionally run company. Or organization.

Q. What -- did your view of their -- the cultures that they brought change over time?

MR. SULLIVAN: Objection to form.

THE WITNESS: Did it -- are you asking did it change the culture of the sales organization?

BY MR. THOMAS:

Q. No, did your view change?

A. Did my view --

Q. So they basically came in, and you thought they brought a more professional -- tried to bring a more professional approach.

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A. It did -- it did not --

Q. Was that the opinion you held the entire time --

A. It --

Q. -- while you were there?

A. Yes, it was. Yeah.

Q. What -- what other observations did you have about how they ran the sales culture at Absolute while you were there?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't -- is there -- is there something specific -- I -- that you're looking for or? Just --

BY MR. THOMAS:

Q. Just -- just -- just your observations, if -- if you saw them conduct themselves in any way other than professionals during the time that you were there.

MR. SULLIVAN: Objection to form.

THE WITNESS: You know, not that I -- not that I recall on the whole.

BY MR. THOMAS:

Q. What about not on the whole, more specifically?

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MR. SULLIVAN: Objection to form.

THE WITNESS: I mean -- I mean, off the top of my head, I -- I can't think of a specific incident at -- at this time.

BY MR. THOMAS:

Q. Did you think that Mr. Awtry conducted himself in a professional manner when he was working at Absolute from a -- let me strike that.

What was your observation about how Mr. Awtry conducted himself from an HR point of view during the time that he was employed at Absolute and you were there?

MR. SULLIVAN: Objection to form.

THE WITNESS: It -- sorry, it's hard for me to answer a question -- just an observation question with -- without knowing kind of specifically what you're -- what you're asking. You know, I -- I worked with him over the course of two and a half years or so, maybe three years. I mean, again, I -- for the most part, from what I recall, he -- he always conducted himself professionally.

D. Berardo

BY MR. THOMAS:

Q. Do you recall times when you felt he was not conducting himself professionally?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, there's -- there's a -- there's a -- I don't remember anything specifically, but -- I mean, I would just be speculating without referring back to emails. It's just -- it was just a really long time ago.

BY MR. THOMAS:

Q. Well, from the emails you took a look at on Monday --

A. Sure.

Q. -- do you remember anything in there that made you think that he conducted himself in ways other than professionally, based on your observations?

A. From the emails on Monday? Not that I recall, no.

Q. Okay. What about Mary Piehler? What was your view of how she conducted herself from an HR point of view -- strike that.

What were your observations about

D. Berardo

how Mary Piehler conducted herself, from an HR point of view, when both you and her were working at the company?

MR. SULLIVAN: Objection to form.

THE WITNESS: So, you know, Mary was -- you know, she -- she was very -- my observations were she was very passionate about her -- her business. And from -- from what I recall -- again, this is just a broad generalization from what I remember -- is that she was very -- she objected to a lot of items that were coming down, and that, you know, perhaps she was -- she was difficult to work with.

BY MR. THOMAS:

Q. Did you find her difficult to work with?

A. Not all the time. At points, from what I recall, yes.

Q. Tell me a time when you found her difficult to work with.

A. Again, it's -- it's hard to remember specifics. I -- I remember just phone calls where, a lot of times, our conversations would

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be going in a round -- going around in a lot of circles. Never really taking ownership of situations. So it was -- it was, you know, generally, never her fault.

Again, I preface that with saying this is just a general observation, so -- so for me to give a specific time when that happened would be difficult for me to recall right now.

Q. Yeah, in speculating about it, do you remember anything?

A. Any specific incidences?

Q. Yes.

A. Nothing off the top of my head right now.

Q. Tell me a little bit about your employment since you have left Absolute.

A. Sure. So I -- I went to a company called "Hyperwallet" in Vancouver. Assumed the position of VP of people. And so I -- I have been there ever since.

Q. What is your role there?

A. So my role is the head of HR. I will preface that with saying that our company was acquired by PayPal, and so my role has changed

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D. Berardo

since the acquisition, since January 1st, so I'm, you know, not the VP of people. So I'm -- I'm head of people for specific -- the Hyperwallet division within PayPal.

Q. Were you aware of surveys that were done of employees in 2014 to get employee feedback?

A. Yes. Yeah.

Q. Did any of those -- did you get the chance to see the results of those surveys?

A. In 2014, yes, I did. Yeah.

Q. Did those results raise any concerns with you?

A. Yeah, absolutely, they did. Yeah.

Q. Why?

A. There was a -- there was a number of areas the company had to work on, in terms of culture -- I mean, there was -- there was other areas. I mean, we -- we came up with a -- with a list of areas that the company needed to work on, and we came up with a plan to work on them. Like, another example that comes to mind is around compensation, coming up with a professional compensation plan for

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D. Berardo

the company. You know, there -- there was definitely other areas too that we worked on.

Q. Do you remember the report showing serious concerns about Todd and -- Todd Awtry and Thomas Kenny's professionalism?

MR. SULLIVAN: Objection to form.

THE WITNESS: So I -- I viewed -- I did view some of those documents during the review on Monday just very briefly, but I do recall there being some comments in the survey about Thomas and Todd.

BY MR. THOMAS:

Q. Did -- did those affect -- when you saw them at the time in 2014, did you pay any attention to them in terms of your view of Thomas and Todd?

MR. SULLIVAN: Objection to form.

THE WITNESS: So, sorry, can you clarify. What do you mean by in terms of my view?

BY MR. THOMAS:

Q. I had asked you what your view was of Thomas --

A. Oh, right.

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D. Berardo

Q. -- Kenny and Todd Awtry when they worked at Absolute and you worked there. Do you remember that a few minutes ago?

A. I do, yes.

Q. And I'm asking you, when you were there and you saw these reports about the professionalism of Thomas and Todd as reported by people within the company, to what degree, if any, did it affect your view of their professionalism?

MR. SULLIVAN: Objection to form.

THE WITNESS: So from what I recall, my view didn't change. Absolute had come from an environment where our founder CEO was very heavily sales-focussed. So it was -- it was a bit of a family-type culture. And so I think I knew when we were bringing in Thomas and TK that -- sorry, "TK," Thomas and Todd -- that -- that there would be a shift and some resistance to the -- the type of culture or the type of sales environment that they -- they would be bringing to -- into the company.

BY MR. THOMAS:

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D. Berardo

Q. You said the founder of the company was very sales-focussed. Did I hear you correctly?

A. I mean, from what -- yeah, I mean, I worked with him for -- until he left the company for a year and a half. And so, from what I recall, he was very sales-focussed.

Q. And were Thomas Kenny and Todd Awtry less sales-focussed than him?

A. No. No. I mean, just -- it was just a different -- a different approach.

Q. And what -- how was that approach different?

A. So I think John's -- who was the founder CEO -- he was a bit -- again, a bit more family -- to use the word -- the term "family," but, you know, we're all in this -- you know, not all in this together, but we're all part of the same family, for example. A bit difficult to describe. Whereas they came in as a bit more corporate and -- and professional and buttoned-up.

Q. So you're saying Thomas Kenny and Todd Awtry came in as more professional and

1 D. Berardo
2 buttoned-up?

3 A. Correct, yes.

4 Q. Okay. When you saw the comments
5 about Thomas and Todd's conduct at the company
6 in the 2014 survey, what steps did you take to
7 remedy the problems that were -- if any, that
8 were raised in the survey?

9 MR. SULLIVAN: Objection to form.

10 THE WITNESS: I don't -- I don't
11 recall specifically, but, you know, I --
12 yeah, I don't -- I don't recall
13 specifically. I'm sorry.

14 BY MR. THOMAS:

15 Q. Do you recall generally?

16 A. Well, I don't think that we -- you
17 know, I would be -- I would just be
18 speculating on -- on kind of the conversations
19 that I -- I may have had with my boss about
20 it, but -- but we --

21 Q. I'm not asking you about
22 conversations with your boss. I'm asking
23 about steps that the company took in response
24 to the survey regarding the professionalism or
25 lack thereof of Thomas Kenny and Todd Awtry.

1 D. Berardo

2 MR. SULLIVAN: Objection to form.

3 THE WITNESS: The company -- you
4 know, the company didn't find anything in
5 the survey that would have caused concern
6 that would have -- you know, that would
7 have made us take steps to change the -- or
8 -- or to rectify the situation.

9 BY MR. THOMAS:

10 Q. So, for instance, when there were
11 comments about the vision and strategy of
12 company, and the comments that came back were
13 things like:

14 Thomas Kenny has not told the team
15 what the company strategy is. Poor
16 communicator and keeps information to
17 himself."

18 The company did not view that as -- well, you
19 didn't view that as a problem that needed to
20 be remedied; correct?

21 MR. SULLIVAN: Objection to form.

22 THE WITNESS: I can't say I didn't.
23 I just don't recall. I mean, as I said
24 before, there may have been conversations,
25 and there may have been some type of -- you

1 D. Berardo
2 know, I -- I would be speculating. You
3 know, the company listened to all the
4 comments, and there may or may not have
5 been conversations with them about
6 communicating better.

7 BY MR. THOMAS:

8 Q. But you don't -- you -- sitting here
9 today, you don't recall changing your
10 opinion -- well, let me read you some more.

11 A. Sure.

12 Q. Another comment:

13 Terrible communication from Thomas
14 Kenny and Todd Awtry. Unclear strategy.
15 Poor decision-making. Questioning
16 integrity of company."
17 That -- that was not something that made you
18 change your view of Thomas and Todd?

19 A. So --

20 MR. SULLIVAN: Objection to form.

21 THE WITNESS: There were -- there
22 were hundreds or maybe even thousands of
23 comments in the survey, and so -- we looked
24 at the survey as a whole, so those
25 individual comments did not change my view.

1 D. Berardo

2 MR. THOMAS: If I could ask the court
3 reporter to give Mr. Berardo a copy of
4 Exhibit 67. So that was Awtry 67.

5 THE COURT REPORTER: Do you mind if
6 we go off the record so I can get it out of
7 the box?

8 MR. THOMAS: Off the record, on the
9 record, however you would like.

10 THE COURT REPORTER: Okay. We should
11 go off.

12 MR. THOMAS: If you want to go off,
13 I'm fine with that. If you want to stay
14 on, we can. Either way.

15 THE COURT REPORTER: Okay. Thanks.

16 VIDEOGRAPHER: Going off record. The
17 time is 11:31.

18 (PROCEEDINGS RECESSED AT 11:31?A.M.)

19 (PROCEEDINGS RECONVENED AT 11:32?A.M.)

20 VIDEOGRAPHER: We're back on the
21 record. The time is 11:32.

22 BY MR. THOMAS:

23 Q. Mr. Berardo, I'm showing you what has
24 previously been marked as Awtry Exhibit 67.
25 If you can take some time and look through

1 D. Berardo
2 that. And this is -- this is a document you
3 saw on Monday too; correct?

4 A. It may -- it may have been. I
5 didn't -- we didn't review it in detail. So
6 this is -- this looks similar, yes.

7 Q. Okay. What I would like you to do is
8 read the document -- take your time -- and let
9 me know if there's any positive comments in
10 here about Thomas Kenny or Todd Awtry.

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: Okay. So you want me
13 to read all 29 pages?

14 BY MR. THOMAS:

15 Q. If you would like, yes.

16 A. Okay.

17 Q. Oh, one thing before you do that,
18 Mr. Berardo, who -- ELT at Absolute refers to
19 the "executive leadership team"; right?

20 A. That's correct.

21 Q. Who was on the executive leadership
22 team in the end of -- or, let's say, in August
23 of 2014?

24 A. It -- I don't -- I -- I can't recall
25 names specifically. It would be the head of

1 D. Berardo
2 each department. I'm sure someone could get
3 that information for you.

4 Q. But that was -- Thomas and Todd were
5 two of those people; correct?

6 A. Thomas for sure. Todd, I would
7 assume. But I don't know for certain.

8 Q. All right. Go ahead and -- and you
9 can read the report, and let me know if
10 there's anything positive in there about
11 either -- either of them.

12 MR. SULLIVAN: Objection to form.

13 THE WITNESS: Can I use your -- do
14 you want me to highlight them -- do you
15 want me to highlight any positives, and
16 then read them to you after? Or do you
17 want me to read them as I go?

18 BY MR. THOMAS:

19 Q. Yeah, you can read them to me -- you
20 can read them to me at the end. Yeah.

21 A. At the end? Okay.

22 Q. Or now. Or now, if you would like
23 to. If you've found any.

24 A. Sure. I will just read them as I go,
25 then. I -- it's going to be -- it depends on

1 D. Berardo
2 who you ask if this is positive or not, but
3 this -- this says:

4 Transitional feel will start to
5 settle nicely as the necessary roles are
6 filled."

7 I'm not sure what that refers to.

8 Q. I -- right now, I'm asking about
9 positive comments about Thomas or Todd. Is
10 that a positive comment about Thomas or Todd?

11 A. It -- it may have been. It may not
12 have been. I don't know. It doesn't -- it
13 doesn't state the names.

14 Q. I'm not asking you to speculate. I'm
15 only asking you to -- when you look at -- when
16 you look at something -- something that you
17 know is positive about the staff.

18 A. Sure. With their names attached?

19 Q. I presume so, unless there's some
20 other way you can identify that they're being
21 referred to.

22 A. So -- yeah, so there was nothing --
23 nothing specific that I saw that called --
24 called out Thomas and TK -- sorry, I just keep
25 on saying "Thomas and TK" -- Thomas and Todd,

1 D. Berardo
2 you know, complimenting them or -- or being
3 positive.

4 Q. Okay. What was the purpose of this
5 survey?

6 A. It was to gather -- gather feedback
7 from employees on a wide range of topics and
8 to help guide kind of some key -- key
9 strategic initiatives over the course of the
10 next year or 18 months.

11 Q. And how was the information in the
12 surveys used to derive key strategic
13 decisions?

14 A. Well, we --

15 Q. Or what was the word you used? Key
16 strategic? What was it?

17 A. I don't recall what I said, sorry.
18 Strategic initiatives?

19 Q. Initiatives.

20 A. Yeah.

21 Q. So how -- how would the survey help
22 that?

23 A. We identified -- I mean, I'm --
24 I'm -- I can't remember everything that we
25 did. One of the -- one of the -- one of the

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things --

Q. And I'm -- I'm sorry. I'm actually asking a different -- different question. At -- at a general level, why was this survey helpful in deriving key strategic initiatives?

A. Yeah.

Q. How would it be used in that process?

A. Yeah, and I --

MR. SULLIVAN: Objection to form.

THE WITNESS: And I should say this was kind of specific to the people, culture, HR, not necessarily business -- business strategic decisions. Why it would be helpful is because it -- the feedback comes directly from employees, and -- and we want to ensure that we have an engaged workforce. And so figuring out what is -- what the main issues are in the company and then trying to rectify them is something that's important -- was important in this company, but is important in any company, I think.

BY MR. THOMAS:

Q. All right. Well, we -- we talked

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about the positive, or lack thereof, comments about Thomas and Todd. I would like to now read you several sections from the report. I will start on page DEFS1387:

Thomas Kenny has not told the team what the corporate strategy is. Poor communicator and keeps information to himself."

Next comment, same page:

Terrible communication from Thomas Kenny and Todd Awtry. Unclear strategy. Poor decision-making. Questioning integrity of company."

Turning to the next page, there's a comment:

Key leadership roles are leaving.

The wrong people. Thomas Kenny and Todd Awtry have pushed out the executives; i.e., Abigail Maines. Upper management should not have let this happen."

Turning to page DEFS01390:

No manager. ELT has no integrity.

Thomas Kenny allows Todd Awtry to hire a sibling; i.e., nepotism. Trust is broken. No one will trust him."

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Next quote on that page:

No manager did more than one year. Lack of communication and connection between Thomas Kenny and Todd Awtry and sales."

Next comment, same page:

The new RD hiring of Kenny affected ELT integrity."

Turning to the next page of the survey, DEFS1391 (as read):

Level of two-way communication from the ELT has decreased greatly over the past -- over the last nine months."

Next page, DEFS01392:

Strongly supported by media manager. Great deal of respect for this person. Communication in Abigail Maines departure was not handled properly. Felt inaccurate. Thomas Kenny wanting to cover himself for blame. Very typical behaviour."

Turning to the next page, DEFS1393:

Disjointed organization. Thomas Kenny and Todd Awtry messed up sales organization. Ineffective multiple

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reporting for different positions.

Demotivated employees equals low sales."

Turning to DEFS1395:

Current leadership of Todd Awtry and Thomas Kenny not receptive to any kind of feedback."

Turning to DEFS1397:

Had a good team leader. Abigail Maines let go, who was great. What has Thomas Kenny contributed? Was it worth it?"

Next quote:

Staff are afraid to speak about management. Not encouraged. If you speak up, you will lose your job."

Next page (as read):

Get Abigail Maines back. Promote to help and retain relationship with other companies. Move -- need to move Thomas Kennedy [sic] and 'sidekick' Todd Awtry, who does not belong, and ensure we retain the talent we already have."

And turning to page DEFS1411 (as read):

Current leadership of Todd and Thomas

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Kennedy -- Thomas Kenny grossly under-qualified. Becomes more and more apparent with decisions being made and the direction they are taking the company. ELT and the board not seriously concerned. No communication from leadership team, prioritization of non-impactful decisions, questions around the rapid build-up of the CER team. Don't currently have the existing business to keep the people in a position adequately occupied. The VAR program is designed to increase business. It has gotten off to an incredibly slow start. Need to put some focus on marketing. There are major concerns about lack of adversity throughout the company. Only have one female member of the ELT. Have no female representation on the management team listed on our website, nor on our board. Women at Absolute are paid less than their counterparts. Difficult for them to advance their careers and increase their earnings. Ethical question regarding nepotism and the hiring of the

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new sales manager. Claim that a local candidate could not be found is essentially dishonest. The sales team has serious reservations about the ability to have an open and honest relationship with the new manager. Seem to be no efforts to brand Absolute as the leader in any area -- in any arena. Customers do not recognize our name. Aren't seen as a leader in any of our competitive spaces."

Now, given those comments about the people, culture, and HR, what did you do in terms of working with Thomas and Todd to derive key strategic initiatives based on you what saw in the survey?

MR. SULLIVAN: Objection to form.

THE WITNESS: So -- so my role was not to -- I -- I didn't have the capacity to work with each individual department. My role was to work on the HR initiatives for the company as a whole.

BY MR. THOMAS:

Q. What did Absolute do to rectify the issues that were raised in the survey in

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regard to Thomas Kenny and Todd Awtry?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't recall, and --

I -- I don't recall.

BY MR. THOMAS:

Q. But the purpose of the survey was to have these issues raised and then rectify them; right?

MR. SULLIVAN: Objection to form.

THE WITNESS: In -- in general, yes.

As I mentioned before, there are thousands of comments, so it would be unlikely that we would be able to address every single comment in the survey.

BY MR. THOMAS:

Q. I'm not asking about every single comment in the survey. I'm talking about the multiple comments I just read to you. That was not something Absolute chose to address?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't have that information. It may have been. I don't -- I -- I may have had conversations -- I -- I would just be speculating. I don't recall.

D. Berardo

BY MR. THOMAS:

Q. Well, I don't want your speculation.

A. Sure.

Q. I want your direct knowledge of anything that Absolute did to rectify the issues that were raised in the survey, which was one of the purposes of the survey.

A. I don't --

MS. LESTRADE: Objection.

THE WITNESS: I don't -- I don't have -- I don't have the -- I don't recall. I don't recall what the company did, specifically.

BY MR. THOMAS:

Q. And you were head of HR at this time?

A. That's correct.

Q. And do you have any documents that would refresh your recollection of anything that occurred?

A. Maybe. I mean, I don't have any documents in front of me. There may be emails. I don't recall the...

Q. And you are telling -- are you saying under oath that after reading the comments in

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these surveys, you continued to believe that Thomas Kenny and Todd Awtry brought a level of professionalism in terms of sales to Absolute?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yes, I did, after the survey. Correct.

BY MR. THOMAS:

Q. Okay. What in the survey made you think they brought in a level of professionalism to the sales force at Absolute?

MR. SULLIVAN: Objection to form.

THE WITNESS: So the surveys is one point in --

BY MR. THOMAS:

Q. Sorry, let me -- let me rephrase that question. What, if anything, in this survey led you to believe that they brought a level of professionalism to Absolute?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, the surveys at one point in time -- I -- I understood, from a holistic point of view, that change is hard for people, and it always is very

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difficult for people. And so any time -- any time there's -- any time there's change in organization, there's going to be people that are -- that are not happy with that change.

So -- so my understanding, when I read the survey, there obviously are various comments on different things, but when you -- when you look at it from a -- from a bigger picture, it didn't change my view about Thomas and Todd coming in to kind of button up the -- the sales organization.

BY MR. THOMAS:

Q. What comment in here made you think they were -- they came in and buttoned up the sales organization?

MR. SULLIVAN: Objection to form.

THE WITNESS: There were no comments in here that -- that did that.

BY MR. THOMAS:

Q. Okay. And you did the survey to understand how the people and culture in HR roles were viewed within the company; right?

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MR. SULLIVAN: Objection to form.

THE WITNESS: Sorry, can you repeat that question.

BY MR. THOMAS:

Q. Yes.

Can the court reporter read it back, please.

(REPORTER READ BACK)

MR. SULLIVAN: Objection to form.

THE WITNESS: The people and culture in HR roles. Sorry, I still don't --

BY MR. THOMAS:

Q. I believe you referred to the people, culture, and HR roles earlier as being what this survey was looking at. Am I correct on that?

A. People, culture, and HR roles. I mean, the -- it wasn't looking at HR roles. We were --

Q. Was it looking at people and culture of the company?

A. Yeah, we were -- it -- it tries to get the -- an understanding of the level of engagement within the company.

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Q. Do you have any reason to believe the survey was done inaccurately?

A. We used a third-party vendor and -- who was -- who was a professional company that did surveys and had scientific backings around the questions that they asked. So there's no reason for me to believe that the way we worded the survey or how we conducted the survey was -- was incorrect.

Q. Or the results are inaccurate? Did you think the results were inaccurate?

A. No.

MR. SULLIVAN: Objection to form.

THE WITNESS: No, I did not.

BY MR. THOMAS:

Q. Did you share the results of the survey with Todd Awtry?

A. Yes. I mean, just from this email, it looks like I did. Wait. Hold on. Sorry. The email was sent to Thomas Kenny. So I only -- it looks like I only sent it to -- to Thomas. I don't recall if I had shared this with Todd.

Q. Did -- to what degree, if any, did

1 D. Berardo
2 reading the survey raise concerns in your mind
3 about how Thomas Kenny and Todd Awtry were
4 running their sales team?

5 MR. SULLIVAN: Objection to form.

6 THE WITNESS: I can't -- I can't
7 recall -- I can't recall what I was
8 thinking at that time.

9 BY MR. THOMAS:

10 Q. Sitting here today, what does it make
11 you think about how Thomas and Todd were
12 running their sales team?

13 MR. SULLIVAN: Objection to form.

14 THE WITNESS: I mean, again, the -- I
15 look at -- I mean, I -- I look at -- when I
16 look at employee surveys, I look at -- you
17 know, there -- there's a lot more than the
18 comments as well. There -- there are
19 the -- you know, there's the numerical
20 values that go with each question.

21 BY MR. THOMAS:

22 Q. Where's the numerical values?

23 A. I don't know. I mean, they're part
24 of the survey, obviously.

25 Q. Do you think -- do you know if there

1 D. Berardo
2 are any numerical values?

3 A. Well, it wouldn't -- there would be
4 numerical values based on each question,
5 asking people to rate --

6 MR. THOMAS: Okay. Well, first of
7 all, let me request a production of those
8 numerical values.

9 BY MR. THOMAS:

10 Q. But I'm asking you, sitting here
11 today with that survey in front of you, how
12 does that make you feel about how Thomas and
13 Todd were conducting themselves in terms of
14 their employees in the sales organization?

15 MR. SULLIVAN: Objection to form.

16 THE WITNESS: Well, I -- I would -- I
17 would -- the feedback that I would give,
18 sitting here today, is that it seemed like
19 communication wasn't as good as it could
20 have been with the strategy. And so I
21 would -- I would likely give the feedback
22 to improve communication.

23 BY MR. THOMAS:

24 Q. Let me ask you -- so from an HR
25 perspective, sitting here today, when you look

1 D. Berardo
2 at that report, what is your observation about
3 how Thomas and Todd were conducting themselves
4 in the sales organization?

5 MR. SULLIVAN: Objection to form.

6 THE WITNESS: I mean, I -- I don't --
7 you're asking me here today, but how they
8 were conducting themselves was five years
9 ago, so it's hard for me to sit here to
10 answer that question when I'm reading a
11 survey that's -- you know, I just don't
12 have --

13 BY MR. THOMAS:

14 Q. Well, this is -- let's go through
15 this. This is a survey you commissioned;
16 correct?

17 A. That's correct, yeah.

18 Q. And you did the survey so that you
19 could get feedback from employees; correct?

20 A. Correct, yes.

21 Q. And you feel the feedback was
22 accurate?

23 A. I mean, the -- the feedback -- the
24 feedback were people's opinions, yes.

25 Q. Which is what you were soliciting?

1 D. Berardo

2 A. Correct, yes.

3 Q. And you have an extensive background
4 in human resources; correct?

5 A. Yeah, we went through my background,
6 so I'm not sure if you call it "extensive" at
7 this point, but it -- that would be -- if
8 that's your opinion, then, okay.

9 Q. Do you have a graduate degree in
10 human resources?

11 A. I have a -- I have a management
12 certificate from BCIT.

13 Q. In human resources?

14 A. That's correct, yes.

15 Q. And how long have you been doing
16 human resources?

17 A. Since 2006.

18 Q. Okay. So with that as background and
19 the survey that you commissioned to find out
20 what -- how the sales organization was being
21 run and that you believe is accurate, what is
22 your view as to how Thomas Kenny and Todd
23 Awtry were performing in terms of the sales
24 organization?

25 MR. SULLIVAN: Objection to form.

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THE WITNESS: So I need to say the survey was not conducted to see how the sales organization was running; it was conducted for the entire company. So it's -- it's difficult for me to answer --

BY MR. THOMAS:

Q. Let's just focus on the sales -- let's just focus on the sales portion of it.

A. Sure. I mean, my answer hasn't changed from the last time you asked.

Q. Which was that communication was lacking --

A. From reading --

Q. -- at least?

A. From reading this, it seemed like there -- there could be improved communication. From reading the comments, yes.

Q. And you remember no steps that you took or that Absolute took when you were head of HR to remedy that; correct?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yeah, I mean, again, I just can't remember the specifics.

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BY MR. THOMAS:

Q. And you characterized their performance as being buttoned-up and professional; correct?

A. I -- that was my -- that was my opinion or my overall view.

Q. Does -- does seeing this report change that?

A. No. I mean, I saw the report when it came out.

Q. So did your view of Thomas and Todd's performance remain just the same about them being buttoned-up and professional before reading this report as it was after?

A. I mean, in general, yes, from what I recall.

Q. And you took no steps in regards to the issues that were raised there?

A. No, I didn't say that. I said that I don't recall the steps that were taken.

Can I take a break?

MR. SULLIVAN: Sure.

MR. THOMAS: Yeah.

VIDEOGRAPHER: Going off record. The

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time is 12:22.

(PROCEEDINGS RECESSED AT 12:22 P.M.)

(PROCEEDINGS RECONVENED AT 12:33 P.M.)

VIDEOGRAPHER: Back on the record.

The time is 12:33.

MR. THOMAS: Oh, I need to take a call here. Hang on. I'll be -- I'll be right back.

VIDEOGRAPHER: Going off record. The time is 12:33.

(PROCEEDINGS RECESSED AT 12:33 P.M.)

(PROCEEDINGS RECONVENED AT 12:38 P.M.)

VIDEOGRAPHER: Back on the record.

The time is 12:38.

BY MR. THOMAS:

Q. All right. Mr. Berardo, what would more, in your -- based on your personal knowledge, what would more accurately reflect the observations of the professionalism of Thomas Kenny and Todd Awtry's interactions with employees; what we see in the survey or your -- or your recollection five years later?

MR. SULLIVAN: Objection to form.

THE WITNESS: Sorry, I don't -- I

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don't know how to answer that question. I don't understand the question.

BY MR. THOMAS:

Q. What part of it don't you understand?

A. Can you repeat the question.

Q. Sure.

Can the court reporter read it back.
(REPORTER READ BACK)

MR. SULLIVAN: Objection to form.

THE WITNESS: Are we -- are you asking for my opinion?

BY MR. THOMAS:

Q. Not for your opinion. Based on -- based on your knowledge of how well you recollect things and how well the survey was done, which do you -- which, in your understanding personally, would be more accurate?

MR. SULLIVAN: Objection to form.

THE WITNESS: Well, so this -- again, the survey was taken in -- at one point in time over the course of two weeks, and my observations was over the course of two or three years, so I -- I would -- I -- you

15 (Pages 54 to 57)

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know, I would say that my recollection overall is probably more accurate than the -- than the employee survey.

BY MR. THOMAS:

Q. Do you have any reason to believe employees felt any better about Thomas and Todd in the weeks and years after the survey while you were still employed there than they did at the time the survey was taken?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yes. I mean, I think, from what I recall, the communication did get better. And, you know, we didn't do any formal -- unfortunately, we didn't do any -- we didn't do a follow-up survey after this before I had left Absolute, but -- but my observations were that things were better.

BY MR. THOMAS:

Q. Didn't you -- well, first of all, didn't you do a survey -- a culture survey June 1st, 2015?

A. I -- it's -- I don't recall, but it's -- it's -- it's possible. Do we -- I

D. Berardo

don't know if we have a copy of it or...

Q. Well, that -- by the guiding coalitions, was it -- it was performed -- it was done by the guiding coalition?

A. Oh, there was -- we -- we did do a -- we -- we -- we did it -- it's possible we did a -- I -- the guiding coalition was to discover what our values were at Absolute. So I -- I don't recall if that was a full survey.

Q. Okay. Do you -- do you remember referring to it as a "corporate cultural assessment survey"?

A. I -- I don't recall what it was called.

MR. THOMAS: Okay. We would request the production of that survey and the results of it.

BY MR. THOMAS:

Q. Did you have any other -- were you aware that Todd Awtry performed a survey, monthly survey of his sales employees regarding their views of his performance?

A. I don't -- I don't recall. Not -- I'm not answering that it -- it didn't happen;

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I just don't recall off the top of my head right now.

Q. Is there any other data points that you can point to that would indicate employees felt that Thomas and Todd did a better job after the survey was performed --

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. -- during the time that you were there?

A. Any -- any, like, surveys or any -- anything that was written down?

Q. Any data points whatsoever.

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, just -- just, I guess, observations, from what I recall.

And --

BY MR. THOMAS:

Q. Did you observe at the time -- did you observe -- at the time that Exhibit -- Awtry Exhibit 67 was being done, did you observe that people didn't like working with Thomas and Todd?

MR. SULLIVAN: Objection to form.

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THE WITNESS: Sorry, can -- can you repeat the --

BY MR. THOMAS:

Q. And felt they were unprofessional?

A. Can you repeat the question?

Q. Sure.

When -- well, first of all, we will request the production of the survey, monthly survey by Todd Awtry.

But, additionally, let's talk about the survey. You were aware that Thomas and Todd had problems in terms of communicating with their employees, in terms of employees' view of their professionalism, in terms of employees' view of their trust in them. Correct? You were aware of -- you were aware of that; correct?

MR. SULLIVAN: Objection to form.

THE WITNESS: So I -- I read the employee survey, but I wouldn't characterize it like you characterized it.

BY MR. THOMAS:

Q. What -- what -- what of my characterization don't you agree with?

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2 A. There were -- well, in the survey,
3 there were people that did talk about the
4 communication. Sorry, you also mentioned
5 their professionalism?

6 Q. Yes. Did you -- did you read that
7 survey and felt the people thought they were
8 doing a professional job?

9 A. Sorry, when I read the survey, did I
10 think that they were doing a professional job?

11 Q. That people were -- didn't have any
12 concerns about their professionalism?

13 MR. SULLIVAN: Objection to form.

14 THE WITNESS: Just for -- reading it
15 now, there were a couple comments that I
16 read, but at -- at the time, there was
17 nothing overall that -- that caused me
18 great concern.

19 BY MR. THOMAS:

20 Q. That wasn't my question to you. My
21 question to you was to be -- well, let me ask
22 you -- let me change it. When you got this
23 survey in August of 2014, did the comments
24 about Todd and Thomas surprise you at all?

25 MR. SULLIVAN: Objection to form.

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2 THE WITNESS: I don't recall. I
3 don't remember.

4 BY MR. THOMAS:

5 Q. You don't recall them surprising you?

6 A. No, I just don't recall what my
7 reaction was.

8 Q. Were you concerned at all about the
9 comment that was made about how women were
10 being treated by Absolute?

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: I don't -- I don't
13 recall that -- I don't recall my reaction
14 to that comment.

15 BY MR. THOMAS:

16 Q. So, now, you're -- let me just get
17 this straight. You're head of HR when the
18 survey comes in; correct?

19 A. That's correct.

20 Q. How important is it for you, as an HR
21 head, to make sure that the company's not
22 discriminating against women?

23 A. That's --

24 MR. SULLIVAN: Objection to form.

25 THE WITNESS: It's very important.

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2 BY MR. THOMAS:

3 Q. One of your most important
4 requirements as head of HR?

5 MR. SULLIVAN: Objection to form.

6 THE WITNESS: It's one of the -- it's
7 one of the most important requirements.

8 BY MR. THOMAS:

9 Q. Okay. And would you take action if
10 you heard people saying that women were not
11 being treated fairly at Absolute?

12 MR. SULLIVAN: Objection to form.

13 THE WITNESS: Absolutely. If someone
14 came up to me and -- and they -- they --
15 they -- of course I would, yes.

16 BY MR. THOMAS:

17 Q. What happens if they put it in a
18 survey?

19 MR. SULLIVAN: Objection to form.

20 BY MR. THOMAS:

21 Q. Would you take action then?

22 A. It would --

23 MR. SULLIVAN: Objection to form.
24 Sorry.

25 THE WITNESS: It would be very

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2 difficult to take action on an anonymous
3 survey without specifics.

4 BY MR. THOMAS:

5 Q. What about a complaint that women
6 weren't being treated fairly, and they were
7 being paid less? Would you take any action if
8 that came to you in a survey, or would you
9 just ignore it?

10 MR. SULLIVAN: Objection to form.

11 THE WITNESS: So -- so being treated
12 fairly, there's -- there -- there's nothing
13 specific. If there was -- if there's
14 something specific, I -- I definitely would
15 look into it. Being paid fairly, again,
16 this is -- this -- you're asking me what I
17 would do now?

18 BY MR. THOMAS:

19 Q. No, I'm asking you, as head of HR at
20 Absolute, was it your policy or practice to
21 act on complaints of sex discrimination when
22 they came across your desk?

23 A. Well, absolutely.

24 Q. What would cause you not to act on a
25 complaint of discrimination that came across

17 (Pages 62 to 65)

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 2 your desk?
 3 MR. SULLIVAN: Objection to form.
 4 THE WITNESS: I don't know -- I'm
 5 sorry. I don't know how to answer that
 6 question.
 7 BY MR. THOMAS:
 8 Q. Can you think of any circumstances
 9 where you shouldn't act on it if it came
 10 across your desk as head of HR, a complaint
 11 about being discriminated against?
 12 MR. SULLIVAN: Objection to form.
 13 THE WITNESS: If -- if someone came
 14 to me and...
 15 BY MR. THOMAS:
 16 Q. I'm not talking about coming to you.
 17 I'm talking about a report in any way, shape,
 18 or form coming across your desk. Under what
 19 circumstances would you ignore it?
 20 MR. SULLIVAN: Objection to form.
 21 THE WITNESS: I -- I mean, I don't --
 22 I mean, I can't think of a million
 23 different circumstances in my head right
 24 now. So, I mean, I can't say, absolutely
 25 certain, that there wouldn't be a case

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 2 all the comments.
 3 Q. What action did you take in regards
 4 to the comment I just read you?
 5 A. I don't recall.
 6 Q. You don't recall examining the pay
 7 practices of Absolute to see if women were
 8 paid less?
 9 A. No, I don't recall.
 10 Q. Do you recall looking to see why it
 11 was difficult for women to advance in their
 12 careers and increase their earnings?
 13 MR. SULLIVAN: Objection to form.
 14 THE WITNESS: I don't recall.
 15 BY MR. THOMAS:
 16 Q. Is that something you would recall
 17 doing?
 18 MR. SULLIVAN: Objection to form.
 19 THE WITNESS: I don't -- I don't
 20 know. I mean, I don't know if I would -- I
 21 mean, it's a hard question to answer if I
 22 would recall something, if I would know how
 23 to -- or I would recall something that I
 24 may have done in the past. I mean, I don't
 25 know how to answer that question. I'm

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 2 where I would give pause and think about
 3 it. I -- I mean, I -- that's why I said I
 4 don't know how to answer this question.
 5 If -- if there was -- if -- if there
 6 was a -- if there was someone that -- that
 7 raised some sort of discrimination claim, I
 8 would take action on it, absolutely.
 9 BY MR. THOMAS:
 10 Q. Well, what happens if it -- well,
 11 let's go to take a look at Exhibit 67,
 12 DEFS1411. Do you see in the second bullet
 13 point where it says:
 14 Women at Absolute are paid less than
 15 their counterparts. Difficult for them to
 16 advance their careers and increase their
 17 earnings"?
 18 Do you see that?
 19 A. Yes, I do.
 20 Q. Did you or did you not read that
 21 survey in August of 2014?
 22 A. So I -- I did read the survey. I
 23 mean, again, there were likely hundreds or
 24 thousands of comments. But I did my best to
 25 go through all the -- all the -- all the --

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1 D. Berardo
 2 sorry.
 3 BY MR. THOMAS:
 4 Q. Truthfully is how I would like you to
 5 answer it.
 6 MR. SULLIVAN: Objection to form.
 7 THE WITNESS: Can you -- can you
 8 please repeat the question? Oh, so can you
 9 please repeat the question?
 10 MR. THOMAS: Yeah, the court reporter
 11 -- can the court reporter read it back,
 12 please.
 13 (REPORTER READ BACK)
 14 THE WITNESS: Correct. And, as I
 15 said, I don't recall.
 16 BY MR. THOMAS:
 17 Q. Are you aware of any documents
 18 reflecting any action that you took whatsoever
 19 regarding the complaint about discrimination
 20 about pay disparities within Absolute?
 21 MR. SULLIVAN: Objection to form.
 22 THE WITNESS: I don't -- I don't
 23 recall.
 24 BY MR. THOMAS:
 25 Q. It was one of the most important

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parts of your job. Is that what you had said?

MR. SULLIVAN: Objection to form.

THE WITNESS: Against discrimination, yes, that's -- that is what I said.

BY MR. THOMAS:

Q. And the reason that you did the survey, which you believe was done accurately, was to find out what strategic initiatives needed to be done in terms of people and culture and HR at Absolute; correct?

MR. SULLIVAN: Objection to form.

THE WITNESS: For -- for the -- yes, for HR and people and engagement, yes.

BY MR. THOMAS:

Q. And someone complained to you that women are not being paid as much as their counterparts and it's difficult for them to advance in their careers, and you can remember doing nothing about that?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't recall if I -- if we did or did not take any action on this. I don't recall. I'm sorry.

BY MR. THOMAS:

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Q. Is this something you should have taken action on?

MR. SULLIVAN: Objection to form.

THE WITNESS: Are you asking me -- BY MR. THOMAS:

Q. Or is it something you would have ignored?

MR. SULLIVAN: Objection to form.

THE WITNESS: Are you asking me what I would do right now?

BY MR. THOMAS:

Q. No, I'm asking you at the time, under Absolute's policies, is this something that you should have taken a look at?

MR. SULLIVAN: Objection to form.

THE WITNESS: Under Absolute -- BY MR. THOMAS:

Q. Or is it something that you should have ignored?

MR. SULLIVAN: Objection to form.

THE WITNESS: No, I -- I don't know the answer -- I don't know the answer to that. I...

BY MR. THOMAS:

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Q. You don't know if you --

A. I --

Q. -- should have taken any action in response to a complaint by an employee that women are paid less than men?

A. So --

MR. SULLIVAN: So objection to form.

THE WITNESS: So this is an anonymous survey, so -- so, again, if someone came to me -- if someone came to me, obviously, I would have taken action. You know, right now, I mean, I -- I can't think of what I would have --

BY MR. THOMAS:

Q. I'm not asking you right now.

A. So I -- I -- it's hard for my mind to go back five years, so that's why I'm saying I can't recall. So if you're asking me what I would do now, I can tell you. I just -- I -- you know, I can't reverse my mind five years ago.

Q. Why can't -- why aren't you sure about what you were supposed to have done five years ago?

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MR. SULLIVAN: Objection to form.

THE WITNESS: Well, because I can't -- I can't recall what I did. So for me to just speculate --

BY MR. THOMAS:

Q. I'm not asking you what you did. I'm asking you what you should have done.

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. Should you have taken a look at the claim that women across the board were being paid less than their counterparts at Absolute? Should you have looked at that?

MR. SULLIVAN: Objection to form.

THE WITNESS: So if I was to look at this right now, I -- I -- and someone had, you know, pointed this out specifically, I -- I would have taken a look.

MR. THOMAS: Okay. We would like any documents that reflect any taking a look or any investigation or anything that was done by Mr. Berardo in regards to anything that relates to the survey, but specifically that section.

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BY MR. THOMAS:

Q. Do you remember giving the -- the survey to Geoff Haydon, the new CEO?

A. I don't remember that, no.

Q. Do you remember him requesting that he see the names of the employees who made the comments?

A. I don't recall.

Q. Is it possible that he did?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, anything is possible. It's possible that he said that.

BY MR. THOMAS:

Q. Should -- was the survey told to employees that it was going to be done anonymously?

A. Yes, it was.

Q. Would there be any reason that Mr. Haydon should have been able to see the names of the employees that made the comments?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, from my perspective, no. That's my opinion.

BY MR. THOMAS:

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Q. But any perspective, that you're aware of?

A. I mean, I can only give you my opinion.

Q. Well, I'm not -- I'm not asking for your opinion. But based on your role as HR manager --

A. Sure.

Q. -- having conducted the survey and working at Absolute, was it appropriate for Mr. Haydon to see the names of the people who made the comments?

A. Sure.

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. From any perspective?

A. No. No, it would not -- it would not have been appropriate.

Q. I would like to talk about Absolute's policy when you worked there in regards to you investigating complaints from employees. Okay?

A. Sure.

Q. Okay. Did Absolute have a policy

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about investigating complaints coming from employees?

A. You know, I don't have the policy manual in -- in front of me, but I believe it was in the handbook.

Q. What was -- what's your understanding of what that policy is?

A. I don't -- I don't recall the specific policy. I'm sorry.

Q. Okay. Well, let me ask you this: If someone came to you and complained about how they were being treated, was that -- did you have a responsibility to investigate that complaint?

A. Absolutely. If it was discrimination or -- or harassment, absolutely, I had a responsibility.

Q. Retaliation too?

A. Retaliation too, absolutely.

Q. Unfair treatment?

MR. SULLIVAN: Objection to form.

THE WITNESS: Unfair treatment of -- of -- of what?

BY MR. THOMAS:

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Q. That an employee comes and says they're being treated unfairly by their manager in the company. Do you have a duty to -- did you have a duty to investigate that?

A. Based --

MR. SULLIVAN: Objection to form.

THE WITNESS: Based on their -- based on their gender or based on their age or -- or based on protected grounds? Or -- or just that they're not being treated fairly in their opinion?

BY MR. THOMAS:

Q. Well, let's break it down into two -- two categories. Let's start with a complaint on any basis. Just that "I'm being treated unfairly." Did you have an obligation to follow up to see what was going on?

A. Well, I would ask the employee on -- on what basis. You know, a lot of times, there's -- oftentimes, there's always disagreements between managers and employees, so I wouldn't be following up --

Q. No, it wasn't -- sorry. Go ahead.

A. No, I wouldn't be following -- I was

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just going to say I wouldn't be following up on every single -- every single, you know, management/employee disagreement, unless it was something that I had a duty to investigate.

Q. And what did you consider those duties to -- the duty to investigate covered what?

A. Well, anything -- anything that -- if there was someone who was being discriminated on -- based on protected grounds, any -- any sort of bullying or -- or sexual harassment.

Q. You said bullying, sexual harassment, discriminated. Anything else?

A. I mean, if someone came to me -- any -- any sort of, like, crimes, anything -- fraud, embezzlement. I mean, anything of that nature, anything illegal.

Q. Would there ever be a reason for -- you described the grounds that you thought you had a duty to investigate. Would there ever be a reason not to investigate those types of complaints?

MR. SULLIVAN: Objection to form.

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THE WITNESS: Not that I'm -- not that I'm aware of.

BY MR. THOMAS:

Q. And in addition to -- did you have any obligation besides simply investigating them? Did you have a duty to remedy the problems?

MR. SULLIVAN: Objection to form.

THE WITNESS: The -- I mean, the -- the company to investigate and to -- and -- and to remedy the situation. Not just to investigate, to substantiate the allegation. If the allegation was substantiated, then to ensure that -- that it was corrected.

BY MR. THOMAS:

Q. What level of harassment by a manager to their -- to their employee was okay at Absolute?

MR. SULLIVAN: Objection to form.

THE WITNESS: What level of, like, sexual harassment? Are you asking about sexual harassment? Or what do you mean, "harassment"?

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BY MR. THOMAS:

Q. Okay. Well, let's say sexual harassment. What level of sexual harassment was okay at Absolute?

A. There was no -- there was no level of sexual harassment that was okay.

Q. What level of -- is it okay for a manager at Absolute just simply to harass an employee, even if it's not sexual?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, I would -- I would need to you clarify what you meant by "harassment." If you --

BY MR. THOMAS:

Q. What do you mean by -- when you use the word "harassment," what do you mean by "harassment"?

A. Well, generally, harassment is sexual harassment, if -- I mean, if a manager is stalking someone outside of work. I mean...

Q. What happens if it's not sexual in nature? Is it okay to be -- for a manager to harass their employee at Absolute?

MR. SULLIVAN: Objection to form.

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THE WITNESS: Again, I -- I need to understand specifically the example that you're asking about.

BY MR. THOMAS:

Q. So there are some -- some forms of harassment by a manager that might be okay?

MR. SULLIVAN: Objection to form.

THE WITNESS: I -- that's not what I said.

BY MR. THOMAS:

Q. Well, what about -- why do you -- I mean, what is confusing to you about the question?

A. Well, harassment --

MR. SULLIVAN: Objection to form.

THE WITNESS: Harassment can be -- it can -- it can be defined in many different ways by many different people, so I --

BY MR. THOMAS:

Q. Give me a definition of harassment that would be okay -- that someone could define something as harassment that would be okay at Absolute.

MR. SULLIVAN: Objection to form.

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THE WITNESS: I mean, the -- the way I define harassment, I don't think anything would be okay, if -- if --

BY MR. THOMAS:

Q. And you define it as...?

A. I -- I define it as kind of nonbusiness -- nonbusiness-type behaviour of a sexual or nonsexual nature that -- that, you know, makes the other employee feel uncomfortable. I mean, again, this is just off the top of my head, so it's hard for me to come up with a full definition.

Q. We'll take that definition. Was that ever okay at Absolute?

MR. SULLIVAN: Objection to form.

THE WITNESS: If -- if someone was harassing someone for nonbusiness reasons, no, it was not okay.

BY MR. THOMAS:

Q. If they were harassing them for business reasons, was it okay?

MR. SULLIVAN: Objection to form.

THE WITNESS: I guess I need to understand -- I mean, you're asking me

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the -- you're asking me harassment for business reasons. I don't -- I don't -- I need to understand what your definition of harassment is for me to answer that question.

BY MR. THOMAS:

Q. I'm going off of your definition, and you said for nonbusiness -- you -- you said "for nonbusiness reasons." So I'm asking -- I'm trying to understand what you're talking about. And so when you say nonbusiness reasons versus business reasons, what is the difference between those?

A. Well, there's a lot of times --

Q. In your -- in your -- in your view.

A. Sure. There's a lot of times with a manager and an employee when there are uncomfortable conversations about performance; correct -- changing your performance, correcting performance. And so, you know, those -- those types of business conversations happen in companies all the time.

Q. Is it okay if a manager yells at an employee during a business conversation?

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MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, in -- in my view, it's not a best practice.

MR. THOMAS:

Q. Is it -- at Absolute, was that okay?

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. Like, was that okay for a manager to do?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, I -- I can't speak on behalf of the company. I mean, for myself --

BY MR. THOMAS:

Q. Well, I'm asking on behalf of HR for the company.

A. Well, I said --

Q. As an HR -- as an HR -- as head of HR, was it okay for managers to yell at employees about business things?

MR. SULLIVAN: Objection to form.

THE WITNESS: It's -- it's not something that I would encourage. Absolutely not. Not a best practice.

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BY MR. THOMAS:

Q. I'm not asking whether it's a best practice. I'm asking if -- was it okay at Absolute for a manager to do that?

MR. SULLIVAN: Objection to form.

THE WITNESS: I would -- if I found out the manager was doing that, I would coach the manager on how to communicate a bit more effectively.

BY MR. THOMAS:

Q. Which would mean not to do it?

A. Which would mean --

Q. Not to yell?

A. -- not to do it, yes.

Q. Okay. What about falsely accusing someone of stealing? Is that something a manager should do at Absolute?

MR. SULLIVAN: Objection to form.

THE WITNESS: Falsely accusing someone of stealing. I mean, if -- if it was false, obviously, the manager shouldn't be telling an employee that they're stealing if they're not stealing. I mean...

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BY MR. THOMAS:

Q. And that was not allowed at Absolute?

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. Or was it allowed?

MR. SULLIVAN: Objection to form.

THE WITNESS: Was it allowed at

Absolute? I mean, are you --

BY MR. THOMAS:

Q. Was -- let me rephrase the question. Was it or was it not allowed at Absolute for managers to falsely accuse their employees of stealing?

MR. SULLIVAN: Objection to form.

THE WITNESS: Again, I don't really understand the question. You're asking me if it was okay for a manager to tell an employee that he or she is stealing when they're not stealing. Is that what you're asking me?

BY MR. THOMAS:

Q. Correct.

A. So I would say that --

Q. Yes.

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A. -- that would not be okay for a manager to tell an employee that they're stealing when they're not stealing or when there's no evidence of stealing.

Q. And you're saying that -- you said a few things, but you're talking about under Absolute policy; right? That wouldn't be acceptable?

MR. SULLIVAN: Objection to form.

THE WITNESS: No, I'm not saying under Absolute policy, just because I don't have the policies in front of me. I -- I don't recall the policies.

BY MR. THOMAS:

Q. Do you think it was -- was it your understanding that it was okay for people -- for a manager to falsely accuse someone of stealing at Absolute under Absolute's policies?

MR. SULLIVAN: Objection to form.

THE WITNESS: Again, I don't have the policies in front of me, so I don't recall specific policies about anything against managers specifically or in the policy for -- you know, anything in the policy

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that would say that managers are not allowed to tell employees that they are stealing when they're not stealing. I don't know if the policy covered that specifically.

BY MR. THOMAS:

Q. It might have; it might not. Either way, it could have -- Absolute -- it could have been okay at Absolute for that to happen; right?

A. I --

MR. SULLIVAN: Objection to form.

THE WITNESS: That's not what I said.

BY MR. THOMAS:

Q. Okay. Sitting here right now, is it possible that under Absolute's policy, falsely accusing an employee of stealing was okay?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't -- I can't answer that question because I don't have the policy in front of me, and I -- I don't have intimate knowledge with the policy right now.

BY MR. THOMAS:

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Q. So it's possible --

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. -- that that was okay?

A. I --

Q. Because if it's not possible, the answer is, no, that wasn't allowed under Absolute policy. If you say you're not sure, it means maybe it's possible; maybe it isn't. Right?

A. I mean, I'm just saying I just don't recall. I don't recall --

Q. Okay.

A. -- the policy. I'm sorry.

Q. Maybe that sort of thing is what can happen at Absolute?

MR. SULLIVAN: Is that a question?

MR. THOMAS: Yeah.

MR. SULLIVAN: Objection to the form of that question.

THE WITNESS: Can you repeat the question, please.

BY MR. THOMAS:

Q. So maybe it was okay at Absolute for

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2 managers to falsely accuse their employees of
3 stealing? As you sit here today, that might
4 have been okay?

5 MR. SULLIVAN: Objection to form.

6 THE WITNESS: Well, I don't have the
7 information in front of me about the
8 policy, so I -- I can't answer whether it
9 would be okay or not okay.

10 BY MR. THOMAS:

11 Q. But maybe?

12 MR. SULLIVAN: I'm sorry. I didn't
13 hear that. Can you --

14 THE COURT REPORTER: But maybe.

15 MR. SULLIVAN: Oh. Objection to
16 form.

17 I'm sorry. Was that a question again
18 or a statement?

19 MR. THOMAS: A question. Maybe,
20 question mark.

21 MR. SULLIVAN: Objection to form.

22 MS. LESTRADE: Asked and answered.

23 MR. SULLIVAN: And asked and answered
24 multiple times.

25 THE WITNESS: So as I have answered

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2 before, I don't have --

3 BY MR. THOMAS:

4 Q. So let me -- let me -- let me
5 rephrase the question. As you sit here today,
6 you can't foreclose the possibility that
7 Absolute would allow managers to tell their
8 employees that they -- tell their employees
9 falsely that they were stealing stuff; right?

10 MR. SULLIVAN: Objection to form.

11 THE WITNESS: I mean, based on the
12 policy, I -- I just -- I don't have the
13 information to say yes or no to that.

14 BY MR. THOMAS:

15 Q. Based on what your knowledge is of
16 Absolute, do you have the ability to say yes
17 or no to that?

18 MR. SULLIVAN: Objection to form.

19 THE WITNESS: Based on my knowledge
20 of Absolute? So not the policy?

21 BY MR. THOMAS:

22 Q. As serving -- as serving there in --
23 as head of HR for -- or the HR department for
24 four-plus years.

25 MR. SULLIVAN: Objection to form.

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2 THE WITNESS: So I think I have
3 answered the question before, that if -- do
4 I think it's okay for a manager to say to
5 an employee that he or she is stealing when
6 they're not stealing. My opinion is
7 that -- my opinion is that that would not
8 be okay when I was the head of HR.

9 BY MR. THOMAS:

10 Q. And that would be -- and your
11 understanding is that would be against policy
12 when you were head of HR there; correct?

13 A. No.

14 MR. SULLIVAN: Objection to form.

15 THE WITNESS: That is -- that's not
16 my understanding. Because I -- I have
17 already answered that I don't have
18 knowledge of the policy off the top of my
19 head, so I can't answer that question.

20 BY MR. THOMAS:

21 Q. What does -- what did Absolute policy
22 require you in HR to do to remedy harassment
23 of employees by their managers?

24 A. I don't -- I -- I don't recall the
25 specific policy.

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2 Q. In general. Do they require you to
3 do anything or not?

4 A. In -- if someone was sexually -- if
5 someone has -- had accused someone of sexually
6 harassing? Is that what you're asking?

7 Q. Or just harassment on any -- on any
8 basis -- on any basis, based on their
9 complaints of discrimination, based on gender.

10 A. Sure.

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: Sure. If it -- if
13 there was harassment based on gender or
14 discrimination, we definitely would have to
15 investigate.

16 BY MR. THOMAS:

17 Q. When you worked at Absolute, did you
18 consider someone to be complaining about
19 discrimination only if they specifically said
20 they were being treated illegally under
21 discrimination laws?

22 MR. SULLIVAN: Objection to form.

23 THE WITNESS: Well, no. I -- someone
24 could tell me -- you know, someone could
25 tell me -- you know, if someone told me --

24 (Pages 90 to 93)

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I mean, someone doesn't have to say "I was treated -- I was treated illegally based on protected grounds." I mean, they would likely tell me the circumstances, and then we could determine if it was sexual harassment or -- or bullying or -- or something that they were being discriminated based on protected grounds.

BY MR. THOMAS:

Q. And it wouldn't be just statements -- you wouldn't require them to make a statement to you like "I'm being discriminated against on the basis of sex" before you would you consider it a --

A. No.

Q. -- complaint; correct?

A. No. Absolutely. Someone wouldn't have to specifically say they were being discriminated on the basis of sex.

Q. If somebody came to you and said -- let's say a woman came to you and said "all I'm asking -- all I'm asking is to be treated the same" in comparison with her male employees, would you -- would that raise an

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issue of discrimination with you?

MR. SULLIVAN: Objection to form.

THE WITNESS: I -- I would -- I would talk to that employee to get a -- get some specifics on -- on what she may be speaking about.

BY MR. THOMAS:

Q. What happens if a female employee came to you and said that she just wants to be paid fairly? Would that -- would you consider that to be something that you needed to follow up on in terms of potential discrimination?

MR. SULLIVAN: Objection to form.

THE WITNESS: I would definitely talk to her about specifics of -- of what she would be referring to so I could -- I could investigate further.

BY MR. THOMAS:

Q. What happens if a woman came to you and said that she wanted to -- when she said that a male employee was being paid full value and that she wanted to be paid full value too for her work?

MR. SULLIVAN: Objection to form.

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BY MR. THOMAS:

Q. Would that have raised a concern in your mind that you needed to look at potential discrimination?

MR. SULLIVAN: Objection to form.

THE WITNESS: Again, I -- I would -- I would -- I -- I would talk to the employee to get -- to gather more information.

BY MR. THOMAS:

Q. Why?

A. Because I would understand -- want to understand why the employee -- why the employee is thinking that way, who is the -- who the employee is comparing themselves to. We would need to look at, you know, probably a whole bunch of different factors on, you know, what job they're doing, what level they're working at, what their experience, their background, their education is.

Q. And you would follow up on -- on comments like that?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yeah, if someone -- if

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someone came to me and -- I would definitely be having that conversation with that person to -- to gather more information from that person.

BY MR. THOMAS:

Q. What happens if an employee came to you and said that she's worried about being retaliated -- it -- well, strike that.

What happens if an employee came to you and said that she was worried that she doesn't want to be known as a "troublemaker"? Would that raise concerns with you?

MR. SULLIVAN: Objection to form.

THE WITNESS: Well, I mean, it would -- it would definitely set off some red flags in my -- in my mind. And I would -- I would ask some probing questions on -- on why the employee felt that way.

BY MR. THOMAS:

Q. What happens if a female employee came to you and said that she's being treated differently than her male counterparts? What would you do?

MR. SULLIVAN: Objection to form.

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THE WITNESS: I would ask -- I -- I would ask, again, specific questions and follow up and get -- get some more specifics from that employee.

BY MR. THOMAS:

Q. These -- is it fair to say all these types of questions that we went over would be the types of questions that would raise red flags in your mind from a discrimination point of view in HR?

MR. SULLIVAN: Objection to form.

THE WITNESS: It would cause me to ask some more questions to the employees for sure.

BY MR. THOMAS:

Q. Because, potentially, the complaints are about discrimination; right?

MR. SULLIVAN: Objection to form.

THE WITNESS: Potentially.

BY MR. THOMAS:

Q. There are other types of questions that employees would ask you that wouldn't raise any red flags, and you wouldn't need to follow up on; correct? Because they wouldn't

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be suggesting discrimination; right?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, there's -- yeah, employees could ask me a whole bunch of different questions that wouldn't raise red flags for me.

BY MR. THOMAS:

Q. Well, most -- and most of the time, when employees ask you questions, you don't feel the need to ask more probing questions to find out if they're talking about discrimination. Is that fair to say?

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. When you were at Absolute?

A. No, that's not fair to say.

Q. Do you say that most -- do you say that, most of the time employees ask you questions, you feel the need to probe more to see if there's discrimination going on?

MR. SULLIVAN: Objection to form.

THE WITNESS: It -- it depends what kind of questions they've asked -- they asked me.

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BY MR. THOMAS:

Q. Okay. And, in fact, the questions we just went over would be the types of questions that would suggest potential discrimination to you; right?

MR. SULLIVAN: Objection to form.

THE WITNESS: They would cause me to ask more questions, yes.

BY MR. THOMAS:

Q. Because of discrimination; right?

A. Well, just because, in my head, I -- I would want to understand if -- yeah, if there was some sort of discrimination or -- or harassment.

Q. Now, you say that you would ask more probing questions. How would you -- what do you mean by that?

MR. SULLIVAN: Objection to form.

THE WITNESS: I would ask some follow-up -- I mean, it depends on what they're telling me, but I would ask some follow-up questions, and I would ask for specifics so I -- so I could understand the situation.

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BY MR. THOMAS:

Q. Would you document what the employee told you?

MR. SULLIVAN: Objection to form.

THE WITNESS: I -- I --

BY MR. THOMAS:

Q. In response to -- in response to your questions?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yeah, I -- I would -- I mean, yeah, if -- if they were coming to me for -- for -- for something that may be discriminatory, I would document it.

BY MR. THOMAS:

Q. And what sort of follow-up would you do after you documented their responses?

MR. SULLIVAN: Objection to form.

THE WITNESS: So if there was -- sorry, if there was discrimination, or if there was not discrimination?

BY MR. THOMAS:

Q. Well, once you asked the follow-up -- what would you -- let me ask you this --

A. Sure.

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Q. -- what would you do to further investigate whether there was discrimination based on what the employee said?

MR. SULLIVAN: Objection to form.

THE WITNESS: You know, it would -- it would depend on the -- it would depend on the circumstances. I mean, there could be thousands of situations, so it really would -- it really would depend.

Oftentimes, we have to look at was there anyone else in the room, witnesses. I would -- you know, again, this is just me -- this is what I would do -- I'm just telling you what I would do right now. Not back then.

BY MR. THOMAS:

Q. I want -- I want to talk about what you would do -- what you would do when you were head of HR at Absolute.

A. Sure. I mean, we would -- we would have to investigate any sort of discriminations, and we would, you know, do so by -- I would do so by, you know, raising it with our legal counsel to help guide us

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through that of -- of any -- with any sort of investigations that we may have to -- we may have to conduct.

Q. Would you raise the issues with the people who were being accused of doing the discrimination?

MR. SULLIVAN: Objection to form.

THE WITNESS: It's based on -- based on the -- it's -- it's based on -- I mean, it would be based on the circumstances, but, oftentimes, you do have to interview the witnesses, and -- and those that are being accused to come up with the -- with the answer.

BY MR. THOMAS:

Q. Would you document those interactions?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yes, you would -- you would document those interactions.

BY MR. THOMAS:

Q. Is there ever a time when, if an employee raised the sorts of questions I just -- well, let me -- let me go back through

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that.

Is there ever a time that an employee said something to you like "all I ask for is to be treated the same --" if a female employee -- strike that.

If a female employee said something like "all I ask is to be treated the same" when comparing herself to male counterparts, is there ever a situation where you wouldn't follow up and ask questions of her about that?

MR. SULLIVAN: Objection to form.

THE WITNESS: So if -- I mean --

MR. THOMAS: What is -- what is the basis of the objection?

MR. SULLIVAN: It's calling for a hypothetical.

MR. THOMAS: No, I'm -- okay. Then let me make it clear.

BY MR. THOMAS:

Q. Under Absolute's policy and practices, as HR manager, would there ever be a time that you wouldn't follow up and ask a woman further questions when she says "all I ask is to be treated the same" and comparing

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herself to male colleagues?

A. So, again, I can't speak to the policy specifically, because I don't have it in front of me right now. I don't recall specifically what it said. But I will say that if someone was in my office at Absolute and she said what you just said, I would always -- I would always ask a follow-up question to her and -- and get more information.

Q. Same for a female employee who says that she just wants to be paid fairly?

A. I would ask her -- I would ask her more information.

Q. Always?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yeah, I would never shoo that person out of my office. I would always ask some more questions.

BY MR. THOMAS:

Q. Would you always ask under -- as -- as 'H' -- as the head of HR, if a woman said that she wants to be paid full value for her work and says that male employees are being

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paid full value but she isn't, would you always ask follow-up questions for that?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yeah, I would ask follow-up questions.

MR. THOMAS: What is -- so what is the basis of the objection, Mark?

MR. SULLIVAN: Hypothetical.

BY MR. THOMAS:

Q. I'm talking about -- well, let me -- I'm not asking hypothetical. I'm talking about under your practices at -- as head of HR, would you always follow up with a woman who said -- that came to you and said "I want to be paid full value for my work" and compared herself to a male employee who she said was being paid full value?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yes, I would have.

MR. THOMAS: What is the objection, Mark?

MR. SULLIVAN: Vague, ambiguous.

MR. THOMAS: What is vague and ambiguous about it?

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MR. SULLIVAN: The circumstances surrounding your -- what is, essentially, a hypothetical. I don't follow them. I think it's -- I think they're vague and ambiguous. I'm not directing --

MR. THOMAS: Okay.

BY MR. THOMAS:

Q. Go ahead, Mr. Berardo.

MR. SULLIVAN: -- him not to answer, but I -- I have asserted objection based on form.

BY MR. THOMAS:

Q. Go ahead, Mr. Berardo. You would always ask -- correct? -- under those circumstances?

A. Yes, I would always ask follow-up questions.

Q. If a female employee said she didn't want to be known as a troublemaker when she was complaining about her treatment by her male manager, would you always ask follow-up questions for that?

A. Yes, I --

MR. SULLIVAN: Objection to form.

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THE WITNESS: Yes, I would ask follow-up questions.

BY MR. THOMAS:

Q. And you would always ask follow-up questions if a female employee told you that she was being treated differently than her male counterparts; correct?

MR. SULLIVAN: Objection to form.

THE WITNESS: I would ask follow-up questions, yes.

BY MR. THOMAS:

Q. And let me just ask you -- I have more to go here. Are you -- in terms of a lunch -- I -- I mean, I'm in a different time zone than you. So I'm -- I don't need a lunch break, but I don't know what you all are thinking. Do you want a -- do you need a lunch break? Do you want to take some time now? Or what is your thought?

MR. SULLIVAN: How are you doing?

THE WITNESS: I'm -- I'm good, if you are.

MR. SULLIVAN: Yeah, we -- we can continue going. What -- I -- is --

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MS. LESTRADE: Yeah.

MR. SULLIVAN: -- everyone else good with that?

MS. LESTRADE: Sure. We've got our lunches here.

MR. SULLIVAN: Yeah.

MR. THOMAS: Okay. Fine.

MR. SULLIVAN: Let's ask the court reporter. You will need a lunch break. What -- can you go another half hour, or do you want to stop now?

THE COURT REPORTER: Yeah, absolutely. Another half hour is fine.

MR. SULLIVAN: All right. Why don't we go another half hour and see where we are then?

MR. THOMAS: Okay.

BY MR. THOMAS:

Q. Mr. Berardo, let me also say that, about today's deposition, if at any point you need a break, of course just let us know. We'll be glad to accommodate it. If I've got a question pending, I may just want to finish off the question and answer before, but we can

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2 take a break.

3 A. Sure. Thank you.

4 MR. SULLIVAN: Do you need a break
5 now, or are you --

6 THE WITNESS: I'm good right now.
7 BY MR. THOMAS:

8 Q. And -- sorry, go ahead. And then
9 also, too, if you're -- and I think we have
10 been doing this so far, but if you have any
11 problems understanding the question I'm asking
12 you, will you be sure to let me know before
13 you answer it?

14 A. Yes. Yeah.

15 Q. And -- and you -- also, too, if I ask
16 you a question and it can be answered several
17 different ways and you're not sure which way
18 to answer it, just let me know that too before
19 you answer, if that's okay.

20 A. Sure, yeah.

21 Q. Were you aware about Errol Olsen
22 engaging in a nude swim when he was -- when he
23 was at -- working at Absolute?

24 MR. SULLIVAN: Objection to form.

25 THE WITNESS: So I -- I came on after

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2 that incident, but -- but I -- I was made
3 -- made aware of that incident.

4 BY MR. THOMAS:

5 Q. Who made you aware of it?

6 A. I don't -- I don't recall
7 specifically. I don't recall specifically who
8 made me aware.

9 Q. Was it told to you through official
10 channels, or was it sort of just gossip?

11 A. It was -- it was -- it was most
12 likely gossip.

13 Q. And what did you hear about what he
14 had done?

15 A. So from -- from what I recall, it
16 was -- it was -- there was the CEO, the CFO,
17 and the COO, and they went skinny-dipping in a
18 pool.

19 Q. Is that the most significant part of
20 it?

21 A. From -- from what I recall.

22 Q. It was not that significant that it
23 was in front of a whole bunch of employees?

24 A. No, so, sorry, it was -- so from --
25 from -- from what I recall, from what was told

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2 to me, it was in front of -- I'm not sure if
3 it was a whole bunch of employees. It was in
4 front of at least --

5 Q. Well, it was at least -- at least in
6 front of a number of employees; correct?

7 A. I -- I would say at least in front of
8 one employee. There may have been more.

9 Q. So who -- who was that employee?

10 A. I don't know. I -- I wasn't there,
11 and so I don't have specifics.

12 Q. Was it done at a company event?

13 A. I don't know.

14 Q. At the pool that the company -- or
15 the hotel the company was staying at?

16 A. I don't know.

17 Q. And Mr. Olsen was your -- was the
18 one -- the head of HR? I mean, or who -- that
19 -- into who HR reported?

20 MR. SULLIVAN: Objection to form.

21 THE WITNESS: When I -- when I -- he
22 was -- he was the -- he -- I reported in to
23 him when I became the HR manager. Previous to that, Leah had
24 reported in to the CEO.

25 BY MR. THOMAS:

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2 Q. Okay. So when you came onboard, they
3 shifted over your forwarding relationship to
4 the guy who had swum naked in front of at
5 least one employee, if not more, at a company
6 event previously; correct?

7 MR. SULLIVAN: Objection to form.

8 THE WITNESS: I -- I started
9 reporting to Errol when I became the HR
10 manager, correct.

11 BY MR. THOMAS:

12 Q. Did you think it was weird at all
13 that you were reporting to a person who --
14 well, first of all, what -- what do you think
15 of the CFO swimming naked in front of
16 employees at a company event --

17 MR. SULLIVAN: Objection --
18 BY MR. THOMAS:

19 Q. -- from an HR perspective?

20 MR. SULLIVAN: Objection to form.

21 THE WITNESS: So you're asking for my
22 personal opinion?

23 BY MR. THOMAS:

24 Q. No, your opinion as an HR -- I mean,
25 as -- with your background in HR --

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2 A. Sure.

3 Q. -- and working at Absolute.

4 MR. SULLIVAN: Objection to form.

5 THE WITNESS: Sure. Obviously, it's
6 inappropriate. Absolutely inappropriate.

7 BY MR. THOMAS:

8 Q. And was there any discipline taken in
9 terms of Mr. Olsen?

10 A. I wasn't --

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: I wasn't at the company
13 at that time. I -- I don't know.

14 BY MR. THOMAS:

15 Q. Did it concern you at all that you
16 were suddenly reporting in HR -- in to someone
17 who had engaged in absolutely inappropriate
18 behaviour?

19 MR. SULLIVAN: Objection to form.

20 THE WITNESS: I don't recall -- I
21 don't recall how I felt about it.

22 BY MR. THOMAS:

23 Q. How do you feel about it now?

24 MR. SULLIVAN: Objection to form.

25 THE WITNESS: How do I feel about it

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2 now? You know -- so, again, if you're
3 asking for my personal opinion, I don't
4 know the --

5 BY MR. THOMAS:

6 Q. No, your -- your opinion as -- with
7 your background in HR.

8 MR. SULLIVAN: Objection to form.

9 BY MR. THOMAS:

10 Q. Should HR be reporting in to the guy
11 who engaged in absolutely inappropriate
12 behaviour with other employees of a sexual
13 nature?

14 MR. SULLIVAN: Objection to form.

15 THE WITNESS: Well, there was --
16 there was no other -- there was no other
17 choice at that point on where to report in
18 to, so under the circumstances --

19 BY MR. THOMAS:

20 Q. So it was fine?

21 MR. SULLIVAN: Objection to form.

22 THE WITNESS: Under the
23 circumstances, that's who I reported in to.

24 BY MR. THOMAS:

25 Q. You could have reported in to the

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2 CEO.

3 MR. SULLIVAN: Objection to form.

4 BY MR. THOMAS:

5 Q. As was done before; right?

6 A. The CEO was part of that incident.

7 Q. Oh, okay. So, yeah, I guess we have
8 the CEO engaged in absolutely inappropriate
9 behaviour; right?

10 MR. SULLIVAN: Objection to form.

11 THE WITNESS: Those were -- that's --
12 that was the gossip that I heard. Again, I
13 wasn't at the company at that time.

14 BY MR. THOMAS:

15 Q. But assuming it to be true, that they
16 were swimming naked in front of at least one
17 employee at a company event -- the CEO did
18 that; is that correct?

19 MR. SULLIVAN: Objection to form.

20 THE WITNESS: Again, this was -- it's
21 gossip. So I wasn't there. I -- I don't
22 know for certain.

23 BY MR. THOMAS:

24 Q. Who was it, to your understanding,
25 that engaged in a nude swim in front of

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2 employees?

3 MR. SULLIVAN: Objection to form.

4 THE WITNESS: I mean, the gossip that

5 I heard was the -- were -- was the -- were the CEO, the CFO, and
6 the COO.

7 BY MR. THOMAS:

8 Q. From an HR perspective, what -- what
9 does that make you feel about Absolute as the
10 company?

11 MR. SULLIVAN: Objection.

12 BY MR. THOMAS:

13 Q. That the CEO, CFO, and COO are
14 swimming naked in front of employees at a
15 company event?

16 MR. SULLIVAN: Objection to form.

17 THE WITNESS: As I mentioned before,
18 it -- I -- I would feel that that's
19 completely inappropriate.

20 BY MR. THOMAS:

21 Q. And what did you feel about working
22 in the HR role for a company that had the top
23 level management engaging in that behaviour?

24 MR. SULLIVAN: Objection to form.

25 THE WITNESS: Well, so me and my

30 (Pages 114 to 117)

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previous manager felt that we could add some professional capabilities and professional HR support to the company, so we -- we felt that we could make a positive impact.

BY MR. THOMAS:

Q. And so when you say there really wasn't anyone -- there wasn't really any other choice, the reason there wasn't any other choice was because the entire top management of the company, you understood, had engaged in absolutely inappropriate behaviour, so you're going to be stuck with one of them. Right?

MR. SULLIVAN: Objection to form.

THE WITNESS: So, I mean, from the gossip that I heard -- again, I wasn't there -- I mean, that was my opinion. I mean...

BY MR. THOMAS:

Q. What does that symbolize to you about the culture of Absolute?

MR. SULLIVAN: Objection to form.

THE WITNESS: The culture of Absolute when?

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BY MR. THOMAS:

Q. When you started working at Absolute. What did that symbolize for you about the culture at Absolute?

MR. SULLIVAN: Objection to form.

THE WITNESS: Well, I think the culture at Absolute, when I started, definitely needed some -- it definitely needed some work. And -- and -- and that's why, you know, when our -- our founder CEO resigned and we went on a search for a new CEO, brought in some new sales professionals, that's why I felt it was a positive -- those were -- those were positive developments.

BY MR. THOMAS:

Q. Why did -- why did the culture need changing, from your HR perspective?

MR. SULLIVAN: Objection to form.

THE WITNESS: Typically, with founder CEOs, you know, they -- they -- they hold the company near and dear. They don't like a lot of change. So I felt for the company to take it to the next level, that it

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needed some outside help.

BY MR. THOMAS:

Q. Because...?

A. I mean, from a business perspective, understanding the importance of HR. That's just from my perspective. From a sales perspective, from a product's perspective, I think an outside person can provide a lot of value.

Q. And one of the -- one of the bad things about the culture at Absolute was the top three people in the company would swim naked at a company event in front of other employees. That was the culture; correct?

MR. SULLIVAN: Objection to form.

THE WITNESS: I wouldn't define the --

BY MR. THOMAS:

Q. That needed help?

A. No, I -- I -- I wouldn't define the culture as -- from that specific incident.

Q. Isn't that typical of the way that -- it was -- it was acceptable for that to happen at Absolute; right?

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MR. SULLIVAN: Objection to form.

THE WITNESS: I wasn't there at the time, so I can't say if it was acceptable or not acceptable.

BY MR. THOMAS:

Q. Well, let's talk about Errol Olsen who was one of the three people. Where is he today?

A. My understanding is that he's still at Absolute.

Q. M'mm-hmm. What -- what position had he held when you were looking for a new CEO?

A. He was interim CEO.

Q. M'mm-hmm. Was that a good -- a good way to have the -- the culture of the company, from your HR perspective?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, from my perspective, Errol -- Errol was a very -- he was a highly engaged leader that really cared about people. That was my --

BY MR. THOMAS:

Q. Are you referring to the nude swim as being highly engaged and very caring about

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 2 people?
 3 MR. SULLIVAN: Objection to form.
 4 BY MR. THOMAS:
 5 Q. Doing -- doing that in front of other
 6 employees, that's very caring?
 7 A. No, that's -- that's not what I
 8 was --
 9 Q. It's --
 10 A. -- referring to.
 11 Q. -- certainly very engaged. I would
 12 agree with you there.
 13 MR. SULLIVAN: Objection to form.
 14 THE WITNESS: That's not what I was
 15 referring to.
 16 BY MR. THOMAS:
 17 Q. Okay. Well, would that be an example
 18 of him being highly engaged, jumping in a pool
 19 naked in front of other employees?
 20 MR. SULLIVAN: Objection to form.
 21 THE WITNESS: That would not be an
 22 example of that, no.
 23 BY MR. THOMAS:
 24 Q. Okay. Would that be an example of
 25 him -- well, why -- well, why don't you -- I

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 2 him when I became the HR manager.
 3 BY MR. THOMAS:
 4 Q. When did you become aware of Thomas
 5 Kenny's comments about Absolute's hiring
 6 criteria during the New York -- Westin
 7 New York City meeting in April 2015?
 8 MR. SULLIVAN: Objection to form.
 9 THE WITNESS: I became aware of it
 10 once Mary was terminated and we were in
 11 discussions with her lawyer, and the lawyer
 12 brought up the comment to us.
 13 BY MR. THOMAS:
 14 Q. Was it a failure on the part of HR
 15 that you didn't become aware of that until
 16 someone threatened to file a lawsuit?
 17 MR. SULLIVAN: Objection to form.
 18 THE WITNESS: I -- I would --
 19 BY MR. THOMAS:
 20 Q. Months later?
 21 A. No. I don't know how we would have
 22 had this information unless the employee came
 23 forward with the information.
 24 Q. How many people were in the meeting?
 25 A. I don't recall specifically. I

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 2 mean, here is a guy who engaged in that
 3 behaviour and managed to stay as CFO of the
 4 company -- to come in from CEO and stay as
 5 CFO. How -- how were -- did your -- how were
 6 you able to change that culture?
 7 MR. SULLIVAN: Objection to form.
 8 BY MR. THOMAS:
 9 Q. Where someone -- where someone can
 10 engage in absolutely inappropriate behaviour
 11 and have that sort of career in the company?
 12 MR. SULLIVAN: Objection to form.
 13 THE WITNESS: So I think that's --
 14 that's more of a question for the board of
 15 directors. From -- from my -- all my
 16 interactions with Errol, he was always
 17 respectful in his communication to me, to
 18 employees. So, I mean -- and -- and he was
 19 very supportive of us creating a very
 20 engaged workforce.
 21 BY MR. THOMAS:
 22 Q. And he was the one chosen to have HR
 23 report in to him as well; correct?
 24 MR. SULLIVAN: Objection to form.
 25 THE WITNESS: Yes. I reported in to

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 2 wasn't at the meeting.
 3 MR. THOMAS: Okay. All right. If
 4 the court reporter can get Exhibit 38 for
 5 the witness, Kenny 38. We can go on or off
 6 the record. It does not matter to me.
 7 THE COURT REPORTER: It's fine.
 8 BY MR. THOMAS:
 9 Q. All right. Once you have the
 10 document, I would like you to return -- I
 11 would like you to turn to response to
 12 interrogatory 15, which is on page 17.
 13 A. Number 15, sorry?
 14 Q. Yeah. Actually, I mean, before we
 15 even go to that, I mean, would you -- would
 16 you have expected in HR that you should have
 17 been informed of the comments that Thomas
 18 Kenny made?
 19 MR. SULLIVAN: Objection to form.
 20 THE WITNESS: If someone had taken
 21 offence to them, I would -- I would have
 22 appreciated someone coming to talk to me
 23 about it.
 24 BY MR. THOMAS:
 25 Q. What about even if someone hadn't

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taken offence to them, just the fact that they were being put out there as the hiring criteria for Absolute. Is it something you would have liked to have been told about?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't think that it was -- I mean, my opinion is that it was not being put out as a hiring criteria.

BY MR. THOMAS:

Q. Or, I mean, was it -- were there -- well, did -- well, let me ask you this: Did you understand that Mr. Kenny said that this -- that he was referring to the type of people that Geoff Haydon wanted to have hired in the company?

MR. SULLIVAN: Objection to form.

THE WITNESS: Is there -- sorry, can

I -- can I look at the quote again?

Because -- is there --

BY MR. THOMAS:

Q. All right. We'll -- yeah, we'll -- we can go there. Hang on here.

A. Sure.

MR. THOMAS: If the court reporter

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could get Exhibits 36 and 37, Kenny 36 and Kenny 37 for the witness.

BY MR. THOMAS:

Q. What I would ask you --

A. This is 38.

Q. -- to do, Mr. Berardo, is read over Exhibit 36 and 37, and then I'm going to ask you some questions about them.

A. Sure.

This is 37.

THE COURT REPORTER: Yeah, and then what is the next one?

THE WITNESS: This is 38.

BY MR. THOMAS:

Q. And I believe if we go in chronological order -- you can take a look -- but I think Exhibit 37 -- oh, I'm sorry. Wait, no. Actually, this is -- yeah, 36 takes place chronologically before Exhibit 37, but --

MR. SULLIVAN: Nelson, the court reporter has not yet located Exhibit 36.

MR. THOMAS: Okay. All right.

Thank you.

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THE COURT REPORTER: Can we actually go off the record?

VIDEOGRAPHER: Going off record. The time is 1:45.

(PROCEEDINGS RECESSED AT 1:45 P.M.)

(PROCEEDINGS RECONVENED AT 2:44 P.M.)

VIDEOGRAPHER: We're back on the record. The time is 2:44.

BY MR. THOMAS:

Q. All right. Hey. Thank you very much.

Mr. Berardo, we'll go over those exhibits in just a second.

A. Sure.

Q. Before I do that, one follow-up question I had for you was you -- when we were talking about the nude swim that the COO, CEO, and CFO participated in, you said you think there was one other -- one other employee present -- or at least one other employee that you thought might be present. Who was that?

MR. THOMAS: Objection to form.

THE WITNESS: So, sorry, I -- I don't know. I -- I wasn't there. I didn't read

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any reports. Just pure gossip and speculation.

BY MR. THOMAS:

Q. Yeah, sure.

A. So I don't know.

Q. I will take your gossip and speculation.

A. Oh, I don't -- I don't -- wouldn't know who that employee was. I was just speculating that there would be at least one employee there, if there was -- you know, it turned out to be an issue.

Q. Were you aware that an employee posted a Facebook page about it?

A. I was not, no.

Q. Okay. All right. So have you had a chance to look at Exhibits 36 and 37?

A. I have not, no.

Q. Okay. Why don't you go ahead and take a look.

A. Sure. Okay.

Q. So I guess the first question I have for you is, turning to Exhibit 36, page DEF9807, did you understand that the comment

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at issue was "the CEO does not want to hire people who are at the end of their rainbow; he just wants to hire guys who are athletes, talk trash, and are aggressive"?

A. Yeah, I believe that, just from my recollection, that was the quote that you -- that you had provided to us that -- that Thomas allegedly said.

Q. Do you consider that to be referring to hiring criteria?

A. Absolutely not.

Q. When it says "the CEO does not want to hire," you don't think that's hiring criteria?

A. I -- I -- recruiting and hiring to me meant at no time did -- did -- did this ever get sent to us to hire, you know...

Q. I'm not asking that. I'm asking you, though, the statement "the CEO does not want to hire blank, blank, blank," that is a reference, whether true or not, to hiring criteria; correct?

MR. SULLIVAN: Objection to form.

THE WITNESS: So you're asking for my

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opinion?

BY MR. THOMAS:

Q. No, I'm asking for -- all my questions today will be you with your HR background.

A. So if someone -- yeah, so if -- if someone said to me "the CEO does not want to hire," that would refer to hiring some -- you know, what he does -- who he does and doesn't want to hire, sure.

Q. Okay. Now, I think you're also saying that what was said was -- was not -- did not accurately reflect the company's hiring criteria; right?

A. This -- this does not reflect the company's hiring criteria, no.

Q. Would you have expected employees to tell you about statements like this that were made at company events?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yeah, I mean, if they -- if they -- if they took offence to it or --

BY MR. THOMAS:

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Q. Even if -- even if they didn't take offence.

MR. SULLIVAN: Objection to form.

THE WITNESS: "The CEO does not want to hire people who are at the end of their rainbow. He just wants to hire guys who are athletes, talk trash, and are aggressive." I mean, as the head of HR, I would have liked if someone would have, you know, brought this to my attention, if -- if -- if it was said.

BY MR. THOMAS:

Q. And no one brought it your attention -- correct? -- until this lawsuit?

A. That's correct.

Q. Now, is it true that Thomas Kenny did not deny that he made these statements?

MR. SULLIVAN: Objection to form.

THE WITNESS: So just referring back to the email, so I said Thomas does not -- does not deny that he said these comments, but he said that they were taken out of context. So -- so that's -- you know, that's a fact that is in the -- that is in

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the exhibit.

BY MR. THOMAS:

Q. And that's a fact that you recorded; right?

A. That's correct.

Q. And that you accurately recorded?

A. I -- I would presume I accurately -- I accurately recorded this, yes.

Q. Did Thomas ever deny to you that he made these comments?

MR. SULLIVAN: Objection to form.

THE WITNESS: From what I recall, he -- I mean, when I had the conversation with him, I don't think he ever admitted that he said -- he said the -- you know, he said it exactly as quoted. You know, so I don't -- I don't recall if --

BY MR. THOMAS:

Q. What did he -- what did he say he said?

A. I don't -- I don't recall -- what I recall is kind of in the email and how he -- how he would have explained that, if he had said -- if he had said "end of the rainbow,"

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what he was referring to -- you know, says he was referring to those that are "coasting in their careers and just collecting a paycheque."

Q. Was that him denying the comment was made?

A. I don't think that was him denying the comment was made, no.

Q. Did he ever deny to you that the comment was made?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't -- I don't -- I don't recall him ever admitting that the -- that the comment was made exactly how it was laid out.

BY MR. THOMAS:

Q. My question to you is did he ever deny making the comment?

A. I -- I don't remember. I don't recall if he ever denied it or not.

Q. And, in fact, if you turn to Exhibit 37, you asked him three main questions. "Where does this statement come from?"

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A. Right.

Q. And he said to you he was referring to the environment where Geoff came from, not a specific quote from Geoff.

A. Okay.

Q. Right? Is that what he told you?

A. I would presume so, if it's -- if it's on here. I would have recorded this accurately.

Q. And you also would have recorded accurately his statement to you Geoff never said the statement to TK?

A. If that's what he said and I wrote down, that would be accurate.

Q. Well, I'm asking you -- well, let's go -- let's -- let's go through -- let's start with Exhibit 36.

A. Sure.

Q. Anything that you have written in 36 that is not accurate?

A. Again, I -- I can only presume five years ago or four years ago, whenever I wrote this down, that I would -- I would only have written down accurate -- accurate things. So

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everything in here --

Q. I'm asking you -- so -- so is there any -- do you have any reason to believe that any statement of yours in Exhibit Kenny 36 is inaccurate?

A. No, I have no reason to believe that.

Q. Turning to Exhibit 37, do you have any reason to believe that any statement that you wrote in Exhibit 37 is inaccurate?

A. No.

Q. Do you remember anything in Exhibit 36 from those conversations that you relate that you left out?

A. Not that I recall.

Q. Any --

A. I --

Q. -- statements that related to the conversations you had in Exhibit 37 that you left out?

A. No. I mean, I -- I can't recall the actual conversation in my mind.

Q. So is there anything you can remember leaving out in Exhibit 37?

A. No. I don't recall the conversation,

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so --- I -- I don't recall the conversation. So, therefore, you know, it's hard for me to answer that question, if I left anything out, because I don't recall the conversation.

Q. In Exhibit 38 and 37, you were sending the information to your in-house lawyer, Oliver de Geest, and your outside lawyer, Aaron Goldstein. Correct?

A. Yes.

Q. Would you have had every incentive to be accurate and complete in what you wrote up to them?

MR. SULLIVAN: Objection to form.

THE WITNESS: Well, I would -- I would have only told them -- I would have only told them the truth. Absolutely.

BY MR. THOMAS:

Q. And would there be any reason that you would have left out any important information to them from these conversations?

MR. SULLIVAN: Objection to form.

THE WITNESS: Not -- not that I recall. I don't recall the conversation, so it's hard -- it's hard --

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BY MR. THOMAS:

Q. My question is -- my question to you is different. My question to you is is there any reason you would have not been complete in describing the conversation that you occur -- that occurred with Mr. Kenny --

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. -- on any important point?

A. Nothing that I can think of.

Q. Now, on page 36, you said that you spoke to seven people from the meeting. Do you see that?

A. Oh, Exhibit 36?

Q. Yeah.

A. Yeah, I do.

Q. Who were those seven people?

A. I don't -- I don't recall their names.

Q. Two women who were present recalled the statement. Do you see that?

A. I do see that, yes.

Q. And brushed it off. They "know how TK is." Do you see that?

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A. I do see that, yes.

Q. And they did interpret it in a negative way; is that correct?

A. Yes, I do see that.

Q. Did it concern you, as head of HR, that the two women you interviewed viewed the comment in a negative way?

MR. SULLIVAN: Objection to form.

THE WITNESS: So, I mean, I can't remember how I -- I felt when I spoke with them. I will say, as the head of HR, yeah, it would concern me.

BY MR. THOMAS:

Q. And did it concern you that they thought that they -- they "know how TK is" --

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. -- in terms of him making comments like that?

A. I can't say that was in reference to him making comments like that. I'm not sure what that -- what that was reference -- what -- what that exactly was referencing.

Q. And, now, you said you would have

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expected someone at Absolute who was bothered by the comment to -- that you would have expected to have heard about it; correct?

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. At the time.

A. I would have -- I would have expected it -- I would have -- I mean, I would -- I would have liked someone to raise it, if -- if they felt offended by it, yes.

Q. And these people did interpret it in a negative way, didn't they?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yeah. From that statement, yes.

BY MR. THOMAS:

Q. And they didn't feel comfortable raising it with you, did they?

MR. SULLIVAN: Objection to form.

THE WITNESS: So I -- I can't

interpret how they felt.

BY MR. THOMAS:

Q. No, my question to you is they did not -- well, I -- they never raised it --

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strike that.

They never raised it with you, did they?

A. They did not raise it, correct.

Q. Let's go back to Exhibit 67.

A. 67?

Q. And if you would go to page DEFS1411 -- and, actually, no, I'm sorry. Well, let's look at that. On DEFS -- I'm sorry. Yeah, let's look at DEFS1411, the middle of that second bullet where it talks about the lack of female representation, diversity of the company, the fact that women are paid less and can't advance their careers.

And then go to the comment on page DEFS1395 where the respondent said:

The current leadership of Todd Awtry and Thomas Kenny is not receptive to any kind of feedback."

And DEFS1397, the second bullet below "comments," which says:

Staff are afraid to truly speak about management. Not encouraged. If you speak up, you will lose your job."

36 (Pages 138 to 141)

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So compare those comments from the survey back in 2014 with the culture in 2015 that felt uncomfortable when comments are made about hiring criteria and raising them with HR. How much had changed?

MR. SULLIVAN: Objection to form.

THE WITNESS: Well, I mean, you're -- you're picking one comment out of, you know...

BY MR. THOMAS:

Q. I picked three.

A. Well, three comments. It could be the same person out of 300-plus people. So I don't think that one comment would --

Q. So three comments.

A. Sure -- those three comments is representative of the culture of -- of Absolute or the culture of speaking up.

Q. Well, it's representative in 2015 that two women who thought these comments were negative towards them and typical of Thomas Kenny didn't feel comfortable mentioning that to you. Correct? You had to find out through a lawsuit?

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MR. SULLIVAN: Objection to form.

THE WITNESS: So, you know, what I would say is that I don't know how they felt or why they didn't bring it up, but I think it would be speculation to say that they didn't bring it up because they felt uncomfortable.

BY MR. THOMAS:

Q. Do you know any other reason why they wouldn't bring it up to HR?

MR. SULLIVAN: Objection to form.

THE WITNESS: It could be because they just brushed it off as -- as no big deal.

BY MR. THOMAS:

Q. Typical Thomas Kenny, the way he is?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't know. I would -- I would be speculating. It would be best to speak to these witnesses.

BY MR. THOMAS:

Q. I don't think -- I don't think you would be speculating about that, because they told you they knew that's how -- they brushed

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it off because they knew that's how Thomas Kenny was.

A. But --

MR. SULLIVAN: Objection to form. Is that a question?

MR. THOMAS: Yeah.

BY MR. THOMAS:

Q. I don't think you're speculating, are you? Because that's what they told you?

A. As I --

MR. SULLIVAN: Objection to form.

THE WITNESS: As I mentioned before, they "know how TK is," I -- I don't have any context or remember any context on why they said that or what they meant by that.

BY MR. THOMAS:

Q. Did any red flags go off with you when you found out that two female employees felt that they were receiving negative comments from their -- the executive vice president of sales, and they didn't feel comfortable coming to you? And you knew there was people in the past had said that they weren't comfortable raising issues about

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Thomas Kenny? Did any red flags go off in your head at this --

MS. LEWIS: That's too vague.

MR. THOMAS:

Q. -- point?

A. So --

MR. THOMAS: Objection to form.

THE WITNESS: So I don't know -- you're saying that they didn't feel comfortable coming to me, and I think that's a misrepresentation of the facts.

Unless they said that --

BY MR. THOMAS:

Q. Well, they didn't come to you. Did it raise a red flag to you that they didn't come to you and people had reported being uncomfortable about raising issues about Thomas Kenny?

MR. SULLIVAN: Objection to form.

THE WITNESS: Well, I spoke with them about it, and they felt comfortable speaking with me when I spoke to them about it.

BY MR. THOMAS:

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Q. So this didn't raise any red flags to you, then?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, it -- when would it have raised red flags? After the fact -- after when I spoke with them?

BY MR. THOMAS:

Q. I'm just asking you if it did or didn't. During the conversation, after the conversation, at any point --

A. It --

Q. -- did it raise any red flags with you?

A. It didn't. Because from -- from -- what I recall of the conversation is that they -- they didn't -- you know, again, they -- they -- they brushed it off. They didn't view it as discriminatory.

Q. Well, why did they brush it off again? I -- we keep coming back to that. Why did they brush it off?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't know. I don't -- I don't recall.

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BY MR. THOMAS:

Q. Why did they tell you they brushed it off?

A. I don't recall.

Q. Why don't -- what did -- what did you say in your email that -- of why they brushed it off?

A. Well, it -- it says there they "know how TK is."

Q. M'mm-hmm. What do you -- red flags didn't go off in your head when two females tell you that they brushed off negative sexual discriminatory comments from their manager because they knew that's how he is?

MR. SULLIVAN: Objection to form.

THE WITNESS: We were -- we were investigating this comment, so it was a bit too late for red flags to go off in my head, because we were already investigating the comment.

BY MR. THOMAS:

Q. Well, there -- well, what about -- do you mean it's too -- it's too late to -- what do you mean by it's too late?

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A. Well, I was already speaking with them, so when a red flag usually goes off in my head is if -- is if we're just finding out about something for the first time.

Q. Aren't you just finding out about something for the first time here?

A. Well, we were finding out -- we -- we knew that Thomas had allegedly said something, and we were investigating the comment. We talked to seven employees, according to the email, and three of the employees remember the comment. So --

Q. My question to you is, yes or no, red flags went off in your head or didn't go off in your head when these women reported this to you?

A. I --

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't recall if red flags went off in my head.

BY MR. THOMAS:

Q. Did you do any follow-up investigation on what they said?

MR. SULLIVAN: Objection to form.

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THE WITNESS: So from what I recall, this was -- this was the investigation, and I don't recall -- I don't recall what was done after this.

BY MR. THOMAS:

Q. Were Thomas Kenny's comments acceptable --

MR. SULLIVAN: Objection --

BY MR. THOMAS:

Q. -- under Absolute's HR policy and hiring criteria?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't have the policy in front of me, so I can't speak to the policy. I think --

BY MR. THOMAS:

Q. Does that help -- let me ask you this: Did -- is what Thomas Kenny said appropriate [lost connection] hiring criteria?

MR. SULLIVAN: Objection to form.

THE WITNESS: So if we're taking -- I mean, if we're taking his quotes as what he actually said, I -- you know, I would say it's -- it's not -- and -- and if you're

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1 D. Berardo
 2 interpreting it like you -- like you...
 3 BY MR. THOMAS:
 4 Q. I'm not interpreting it. I'm just
 5 asking. I -- thank you for your answer.
 6 What did you do to Thomas Kenny for
 7 making these comments?
 8 MR. SULLIVAN: Objection to form.
 9 THE WITNESS: We -- we investigated
 10 the comments. From what I recall, the
 11 company determined that there was nothing
 12 further to investigate.
 13 BY MR. THOMAS:
 14 Q. And what sort of disciplinary action
 15 was taken against an executive vice president
 16 who made inappropriate hiring comments which,
 17 in turn, made women feel in a negative way?
 18 MR. SULLIVAN: Objection to form.
 19 THE WITNESS: I don't -- I don't
 20 recall -- I don't recall what was done.
 21 BY MR. THOMAS:
 22 Q. You don't recall taking any action
 23 against Thomas Kenny, do you?
 24 A. Well, I -- I don't recall what action
 25 was taken. I'm -- I'm sure --

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1 D. Berardo
 2 THE WITNESS: We investigated, and it
 3 was determined --
 4 BY MR. THOMAS:
 5 Q. I'm not asking you whether you
 6 investigated. I'm asking you should any
 7 action have been taken against him?
 8 A. So the --
 9 MR. SULLIVAN: Objection to form.
 10 THE WITNESS: The action was -- doing
 11 an investigation was part of the action
 12 against him. Because we're --
 13 BY MR. THOMAS:
 14 Q. Oh, so just investigating him is
 15 action against him?
 16 A. Well, if the investigation finds that
 17 something was -- was inappropriate and against
 18 company policy, then there would be action
 19 against that employee.
 20 Q. And just doing the investigation is
 21 taking sort of a personnel action against
 22 somebody in the company, isn't it?
 23 MR. SULLIVAN: Objection to form.
 24 THE WITNESS: Sorry, what do you mean
 25 by that question?

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 2 Q. Was any action taken?
 3 A. I don't recall.
 4 Q. Okay. Do you have any documents that
 5 indicate any action was taken?
 6 A. I mean, I don't -- I don't work for
 7 the company anymore, so...
 8 Q. When you were there from -- well, you
 9 were there at the time. Do you remember
 10 taking any action?
 11 A. What I'm saying is I don't recall --
 12 I don't recall what was discussed; if it was a
 13 verbal, or if there was something else that
 14 was done. I -- I don't remember.
 15 Q. Was there a verbal?
 16 A. I don't remember. I don't recall.
 17 Q. Should some action have been taken
 18 against Thomas Kenny?
 19 MR. SULLIVAN: Objection to form.
 20 THE WITNESS: We investigated, and --
 21 BY MR. THOMAS:
 22 Q. My question is should any action have
 23 been taken against him?
 24 A. So we --
 25 MR. SULLIVAN: Objection to form.

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1 D. Berardo
 2 BY MR. THOMAS:
 3 Q. Well, I think you said just doing the
 4 investigation was action enough.
 5 A. No -- no, I --
 6 Q. [Indiscernible] --
 7 A. -- didn't -- I didn't say that. I
 8 didn't say it's --
 9 Q. Okay.
 10 A. -- action enough.
 11 Q. But doing an investigation was part
 12 of the company's action against him; correct?
 13 A. Well, it's -- it's part of -- I mean,
 14 it's part of -- when someone makes a
 15 complaint, an investigation is -- is -- is an
 16 action you take towards finding out the facts
 17 and the truth and coming up with a resolution.
 18 Q. What were the facts and the truth
 19 here?
 20 A. What were the facts and the truth
 21 here?
 22 MR. SULLIVAN: Objection to form.
 23 THE WITNESS: I mean, the -- the
 24 facts were that Mary had alleged that this
 25 comment was made, and -- and we -- we

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1 D. Berardo
2 investigated what he meant by each of these
3 comments -- or each of his comments, and it
4 was determined that -- it was determined
5 that -- that -- that the intent of the
6 comments were not -- were not based on any
7 sort of discrimination.

8 BY MR. THOMAS:

9 Q. Where was that determination
10 recorded?

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: I mean, I -- I don't
13 recall. I mean, part of it is here on --

14 MR. THOMAS: Okay. We request the
15 production of any documents reflecting any
16 determination, any action, anything
17 involving Tom Kenny and the company's
18 investigation.

19 BY MR. THOMAS:

20 Q. Let me ask you -- you said it was
21 determined. The truth -- the truth was that
22 he did make those comments; correct?

23 MR. SULLIVAN: Objection to form.

24 THE WITNESS: That's not what I said.
25 He was alleged --

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2 BY MR. THOMAS:

3 Q. I'm asking you now.

4 A. So he was alleged to have made those
5 comments. He --

6 Q. Did he -- did he make -- did he make
7 them?

8 MR. SULLIVAN: Objection to form.

9 THE WITNESS: So he didn't deny the
10 comments. I don't -- I don't recall if
11 he -- I mean, I -- I don't recall what he
12 said.

13 BY MR. THOMAS:

14 Q. Well, you weren't there, but what --
15 you can look at your emails. What was he
16 alleged to have said?

17 A. Well, he was -- he was alleged to
18 have said what -- what Mary -- what you had
19 brought forward during our negotiations.

20 Q. And did you come to -- what
21 conclusion did you come to as to whether he
22 made those comments?

23 A. So I'm not sure if we ever came to a
24 conclusion if he or if he didn't make those
25 exact comments.

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2 Q. Okay.

3 A. I don't recall.

4 Q. But, Mr. Berardo, you're telling me
5 under oath that as an HR official and -- and
6 you have an executive vice president for sales
7 who tells a room of sales employees "the CEO
8 does not want to hire people who are at the
9 end of their rainbow; he just wants to hire
10 guys who are athletes, talk trash, and are
11 aggressive." You're telling me that you never
12 came to a conclusion as to whether he said
13 that or not?

14 MR. SULLIVAN: Objection to form.

15 THE WITNESS: I -- I don't -- I don't
16 recall -- I don't recall the specific notes
17 from the -- with our conversations with the
18 witnesses there. I mean, I wasn't -- I
19 wasn't there.

20 BY MR. THOMAS:

21 Q. That's not my question. Do you
22 remember what my question was, Mr. Berardo?

23 A. No. Go ahead. Repeat it.

24 Q. Okay. My question to you is -- well,
25 actually, I will have the court reporter read

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2 it back.

3 A. Sure.

4 (REPORTER READ BACK)

5 THE WITNESS: I -- I don't recall if
6 we came to a conclusion or not.

7 BY MR. THOMAS:

8 Q. You should have -- you should have,
9 though, one way or the other; right?

10 MR. SULLIVAN: Objection to form.

11 THE WITNESS: I don't know if we
12 should have or shouldn't have. I just know
13 that -- I don't recall -- I don't recall
14 the conversations around if it was
15 determined whether he said that or not.

16 BY MR. THOMAS:

17 Q. Well, if you're supposed to come to
18 the truth of an allegation, how can you do
19 that if you don't determine whether the person
20 said what was supposed -- what they said was
21 said?

22 MR. SULLIVAN: Objection to form.

23 THE WITNESS: Well, I think it came
24 down to -- I mean, his words could be
25 interpreted different ways by different

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people. So it's -- sometimes it's very difficult to come to the absolute truth.

BY MR. THOMAS:

Q. So you -- you found that -- you found his statement here and his non-denial that he made them difficult to decide what to do?

MR. SULLIVAN: Objection to form.

THE WITNESS: So from what I recall, it -- it -- it wasn't -- it -- it wasn't clear. It wasn't black and white. It was -- you know, he explained what he meant by -- by what he said. And it was interpreted differently -- it was interpreted differently.

BY MR. THOMAS:

Q. Is this an example of Mr. Kenny's professionalism -- professionalism that you thought so highly of?

MR. SULLIVAN: Objection to form.

THE WITNESS: Is this an example of his professionalism? I mean, you're asking for my opinion?

BY MR. THOMAS:

Q. As an HR person, yes.

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MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. Is this a professional HR way to approach hiring decisions and communications with employees?

A. So --

MR. SULLIVAN: Objection to form.

THE WITNESS: So I don't think this was a way to -- this was never -- he was never directed to hire people. I can attest to that --

BY MR. THOMAS:

Q. Well, what were the first three -- what are the first three words of the comment? Or the first five words?

A. So the first five --

Q. "The CEO does not want to hire."

A. So that's what --

Q. That's what you're saying doesn't relate to hiring decisions?

A. So that's what alleged -- that's what alleged -- yeah, that's the alleged quote.

Q. Alleged quote is the one that he does not deny making; right?

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A. It says that Thomas did not deny he -- that he said these comments, but they were taken out of context, yes.

Q. Okay. So he doesn't deny that he said the CEO does not want to hire people who are at the end of their rainbow; he just wants to hire guys who are athletes, talk trash, and are aggressive. Is this an example of a professional, buttoned-down comment by Thomas Kenny?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, no.

BY MR. THOMAS:

Q. Did it -- did it surprise you that he would make such a comment?

MR. SULLIVAN: Objection to form.

THE WITNESS: So it -- did it surprise -- yeah, I mean, from what I recall, I was a bit surprised that he said -- that it was alleged that he said this.

BY MR. THOMAS:

Q. And that he didn't deny that he said it?

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MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. You keep saying "alleged." He "allegedly" said it. Do you think we can drop "allegedly" at this point because he doesn't deny that he said it?

MS. LESTRADE: No.

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. Or do you still want to say "alleged"?

A. Well, from -- from what I recall, I mean, the -- the quote is very specific, and he wasn't sure -- he wasn't sure exactly what he said. So I would hate for it to be the truth -- I would hate for it to be brought forward as the absolute truth, because, from what I recall, you know, he didn't -- he didn't -- he didn't remember it exactly like it was -- like it was said. He just didn't deny that --

Q. You don't --

A. -- something like --

Q. Yeah, you -- you don't --

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2 A. -- that was said.

3 Q. -- mention that in either Exhibit 36
4 or 37 that he doesn't remember it exactly, do
5 you?

6 A. Sorry?

7 Q. You don't mention anywhere in
8 Exhibit 36 or 37 that he doesn't remember it
9 exactly, do you?

10 A. I don't know. A lot of this is
11 redacted, so --

12 Q. No, no, I'm asking you in -- anywhere
13 in 36 or 37 --

14 A. Oh, sure.

15 Q. -- did he -- did you say that he
16 didn't remember it exactly?

17 A. No, I don't think -- not -- not in --
18 not in what I'm looking at right now, I did
19 not say that.

20 Q. And -- and, in fact, the female
21 employees said they know how he is; right?

22 MR. SULLIVAN: Objection to form.

23 THE WITNESS: They know how TK is,
24 yes. That's what's down here.

25 BY MR. THOMAS:

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2 Q. Okay. And who were the two female
3 employees you talked to?

4 A. So I don't know for -- I don't know
5 for certain. I -- I believe one was Myra.

6 Q. Myra Moy-Gregory?

7 A. Yes.

8 Q. And the second? Amy Rathbun?

9 A. Amy Rathbun, yes.

10 Q. Do you think they were being honest
11 with you?

12 MR. SULLIVAN: Objection to form.

13 THE WITNESS: I -- I don't know -- I
14 don't -- I can't answer what -- what
15 they -- if they were being honest or if
16 they were not being honest. I mean, I
17 would assume -- I would think that they
18 would be honest with me, yes.

19 BY MR. THOMAS:

20 Q. Now, is it indicative of Absolute
21 culture that the executive vice president for
22 sales can say "the CEO does not want to hire
23 people who are at the end of their rainbow; he
24 just wants to hire guys who are athletes, talk
25 trash, and are aggressive," and suffer no

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2 repercussions for doing so?

3 MR. SULLIVAN: Objection to form.

4 THE WITNESS: Again, I -- I don't
5 know if he suffered any repercussions --

6 BY MR. THOMAS:

7 Q. If he didn't suffer any, that -- it's
8 okay at Absolute?

9 MR. SULLIVAN: Objection to form.

10 THE WITNESS: If he -- if he
11 didn't -- sorry, if he didn't?

12 BY MR. THOMAS:

13 Q. Are you aware of any -- are you aware
14 of any negative consequences he suffered?

15 A. I mean, I -- I don't recall. I mean,
16 Thomas was --

17 Q. Okay. Is that -- is that --

18 A. Thomas was --

19 Q. -- acceptable, under Absolute
20 culture, to make comments like this and no one
21 have any record of any negative repercussion
22 to him whatsoever?

23 MR. SULLIVAN: Wait a minute.

24 Will you -- will you finish your
25 prior answer.

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2 THE WITNESS: Can you read back what
3 I was...

4 (REPORTER READ BACK)

5 THE WITNESS: I mean, I was going to
6 say Thomas was eventually terminated from
7 Absolute.

8 BY MR. THOMAS:

9 Q. How long after this?

10 A. I -- I think it was after I left.

11 Q. So we're talking a year?

12 A. So, no, I left at the end of -- I
13 left at the end of 2016. So this was six
14 months -- I don't remember if Thomas was
15 terminated before or after. I'm sure we can
16 get that to you.

17 Q. Yeah, we -- we have that information.

18 A. Sure.

19 Q. But setting aside -- we have the
20 reason for his termination. Leaving -- I will
21 just represent to you they're not because of
22 this.

23 Is there any -- is it indicative of
24 the culture at Absolute that a person can make
25 a comment like Thomas Kenny did and suffer no

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2 repercussions?
3 MR. SULLIVAN: Objection to form.
4 THE WITNESS: If the -- if the
5 comment -- if the comment was found to be
6 discriminatory, I would say that it would
7 not be indicative of the culture. But we
8 -- we investigated, and it was determined
9 that the -- his intentions were not to be
10 discriminatory.
11 BY MR. THOMAS:
12 Q. And because he didn't have that
13 intention, he suffered no repercussions for
14 what he said?
15 MR. SULLIVAN: Objection to form.
16 THE WITNESS: Again, I don't -- I
17 don't recall if there were any
18 repercussions or not.
19 BY MR. THOMAS:
20 Q. I'm asking you would it be indicative
21 of Absolute culture that a person could say
22 this, regardless of --
23 MS. LESTRADE: Asked and --
24 BY MR. THOMAS:
25 Q. -- their intentions --

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1 D. Berardo
2 culture you all have?
3 MR. SULLIVAN: Objection to form.
4 THE WITNESS: That's not the type of
5 culture we have.
6 BY MR. THOMAS:
7 Q. But that's what happened here.
8 MR. SULLIVAN: Objection to form.
9 THE WITNESS: I think that comments
10 can be interpreted in a number of different
11 ways to a number of different people.
12 BY MR. THOMAS:
13 Q. And some are acceptable?
14 MR. SULLIVAN: Objection to form.
15 THE WITNESS: I mean, that's --
16 that's -- that would be someone's opinion,
17 if they're acceptable or not.
18 BY MR. THOMAS:
19 Q. Well, let me ask you this: As an HR
20 person, is this an acceptable comment for an
21 executive vice president of sales to make,
22 regardless of their intention?
23 MR. SULLIVAN: Objection to form.
24 THE WITNESS: I think that there
25 would -- there would be some coaching after

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1 D. Berardo
2 MS. LESTRADE: -- answered.
3 BY MR. THOMAS:
4 Q. -- and suffer no negative
5 repercussions? Would that be indicative of
6 how you all ran things?
7 A. I think --
8 MR. SULLIVAN: Objection to form.
9 THE WITNESS: -- I already answered
10 that question.
11 BY MR. THOMAS:
12 Q. Which is, yes, that it --
13 MR. SULLIVAN: Objection to --
14 BY MR. THOMAS:
15 Q. -- could be indicative?
16 MR. SULLIVAN: Objection to form.
17 THE WITNESS: No, I don't think
18 that's what I said.
19 BY MR. THOMAS:
20 Q. I said regardless of his intentions.
21 Let's assume his intentions were fine.
22 A. His intentions were fine --
23 Q. It's fine for someone to say this if
24 they have good intentions, and nothing happens
25 to them at Absolute? That's the kind of

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2 for sure. If -- if it wasn't -- if it
3 was -- there is -- there's better ways to
4 say it, yes.
5 BY MR. THOMAS:
6 Q. So, no, it's not acceptable; correct?
7 MR. SULLIVAN: Objection to form.
8 THE WITNESS: It's not for me to
9 determine whether it's acceptable or not.
10 BY MR. THOMAS:
11 Q. You're -- but, I mean, you're head of
12 HR.
13 A. Well --
14 Q. What do you mean it's not up to you
15 to determine whether a discriminatory comment
16 is acceptable or not?
17 A. So --
18 MR. SULLIVAN: Objection to form.
19 THE WITNESS: So, again, we're -- we
20 -- we determined --
21 BY MR. THOMAS:
22 Q. Wait, wait, wait. I want to get back
23 to that. It's not your job? It's not your
24 job to determine whether this -- a
25 discriminatory comment is acceptable or not?

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A. That --

Q. You really -- do you stand by that?

A. No, that's not what I said. You're

--

Q. Well, let's read back your answer.

A. You're now --

MR. THOMAS: Court reporter, can you read back his answer --

THE WITNESS: You're --

MR. THOMAS: -- about what he said about it being his job.

THE WITNESS: Can you also read back his question, though, so it's not taken out of context.

MR. THOMAS: Absolutely. Please read the question and answer back.

(REPORTER READ BACK)

THE WITNESS: So what I meant --

BY MR. THOMAS:

Q. It's not -- it's not for you to determine whether a comment like this is acceptable or not?

A. So if I -- so --

MR. SULLIVAN: Objection to form.

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THE WITNESS: So when you speak like that, it -- it just -- it confuses me a bit on -- on what we -- we've just talked about.

Can you just read back --

BY MR. THOMAS:

Q. All right. Let's -- let's start again.

A. Thank --

Q. Is it your job to determine whether a comment about people -- that people make about hiring criteria of the company are acceptable or not?

A. Well, if they're -- yeah, if they're -- if they're discriminatory or not, that is -- that is part of my job.

Absolutely.

Q. Okay. And do you find the comment that Thomas -- when you -- when you were head of HR for Absolute, did you find the comment that Thomas Kenny made acceptable or not?

A. Through the investigation, we determined that it -- there wasn't any sort of discrimination. His intent was not

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discriminatory. As I said before, there are better ways -- there were better -- there would be better ways to -- to say what he was trying to say.

Were they discriminatory? We determined that they weren't. I don't know what -- what more you want me to say about that.

Q. Just the truth.

A. That -- that's the truth.

Q. That it was acceptable?

MR. SULLIVAN: Objection --

MS. LESTRADE: Oh, my god.

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. I mean, it's not -- I mean, Mr. Berardo, it's acceptable, or it's not. I will let you choose which -- I mean, I -- I just need the -- I just want the truth. Did you find it acceptable or not acceptable, what he said?

A. Well, I don't think it's --

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't think it's -- it's -- it's black and white. Again,

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there's -- there's different interpretations of the way different people say things. Or different -- different -- people say things, and they can be interpreted differently, right, by different people.

So we found that the way -- his intent was not discriminatory. And so could he have said it better? I already said yes. I don't know how to answer if it was acceptable or not and -- and in what context.

BY MR. THOMAS:

Q. Why is it not -- why is it not discriminatory to say that you want to hire guys who are athletes, talk trash, and get in each other's faces? Why is that not discriminatory?

MR. SULLIVAN: Objection to form.

THE WITNESS: Because we determined that what he meant -- what he was referring to were -- by "guys" -- I mean, it says here by "guys," that's just the way he referenced all people, "guys." "Hey, you

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guys." He says it in a generic term, like many people do. At no time did he ever mean men.

So -- so when we looked -- when we looked and we asked him -- you know, again, we didn't find his intent to be discriminatory.

BY MR. THOMAS:

Q. However, you did find two women who the comment -- they interpreted it in a negative way?

A. Sure, yes.

Q. Right? So on one -- on one hand, you have two women who interpreted it in a negative way; on the other hand, you have an inappropriate comment, but you take the man's word that he didn't mean it in a discriminatory way. Is that how -- is that how it shook out?

MR. SULLIVAN: Objection to form.

THE WITNESS: No, because there -- there -- there was context, and there was discussions with these two women. And sitting here today, I can't remember -- you

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know, I can't remember what they meant by -- when they said they interpreted it in a negative way. Negative doesn't --

BY MR. THOMAS:

Q. What weight did you -- what weight did you give to their concerns?

MR. SULLIVAN: Were you finished with your answer?

THE WITNESS: I was saying negative --

BY MR. THOMAS:

Q. Were you -- yeah, were you finished? Did you have anything else?

A. Yeah, I was going to say "negative" doesn't necessarily mean "discriminatory."

Q. Okay. What weight did you give to their comments?

MR. SULLIVAN: Objection to form.

THE WITNESS: We -- we would have given -- we would have given their -- their comments equal weight. Absolutely.

BY MR. THOMAS:

Q. Somehow, though, the man ends up not getting punished; correct?

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MR. SULLIVAN: Objection to form.

THE WITNESS: Because it was determined that his comments were not discriminatory.

BY MR. THOMAS:

Q. And one of the people that made that determination was Errol Olsen; correct?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't -- I don't recall who -- who all was involved with the determination.

BY MR. THOMAS:

Q. Well, why don't you turn to page DEFS09807, where you say:

Hi, Aaron. Our CFO spoke to Thomas Kenny last week."

Who was your CFO?

A. Our CFO was Errol Olsen.

Q. So the guy who swam nude in front of employees at the -- at the gathering to whom HR reported is the one who is involved in this investigation; correct?

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

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Q. Just so I'm clear.

MR. SULLIVAN: Objection to form.

THE WITNESS: Errol was involved with the investigation.

BY MR. THOMAS:

Q. Right? And I -- just to be clear, he's the one who swam nude in front of other employees at an employee event; correct?

MR. SULLIVAN: Objection to form.

THE WITNESS: I wasn't there. I don't know. Again, it was gossip.

BY MR. THOMAS:

Q. And then, somehow, the man's word gets believed; right?

MR. SULLIVAN: Objection to form.

THE WITNESS: What -- what man's word gets believed?

BY MR. THOMAS:

Q. That would be Mr. Kenny's.

MR. SULLIVAN: Objection to form.

THE WITNESS: It was -- yeah, it was -- well, it was determined that -- that his -- you know, that his statement was not discriminatory.

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1 D. Berardo
 2 BY MR. THOMAS:
 3 Q. What a shock.
 4 MR. SULLIVAN: Is that a question?
 5 MR. THOMAS: No, just a statement.
 6 MR. SULLIVAN: Or a speech?
 7 MR. THOMAS: Actually, I don't think
 8 it was long enough for a speech, but
 9 whatever you -- whatever you want to call
 10 it is fine with me.
 11 MR. SULLIVAN: We'll call it a
 12 speech.
 13 MR. THOMAS: It was a part -- maybe a
 14 part of the closing statement.
 15 BY MR. THOMAS:
 16 Q. Have you ever heard about -- did you
 17 ever hear about the movie "Mall Cops"?
 18 A. "Mall Cops"?
 19 Q. Yes.
 20 A. I think so, yeah.
 21 Q. Do you remember the -- the joke in
 22 there was that mall cops -- all that mall cops
 23 do is observe and report?
 24 A. I -- I don't -- I don't recall that,
 25 no.

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1 D. Berardo
 2 Q. Did you attend the 2015 executive
 3 managers' meeting in Whistler?
 4 A. I -- I attended. I did attend an
 5 executive leadership team meeting in Whistler.
 6 I don't recall if it was 2015. It must have
 7 been.
 8 Q. Sorry, what was that?
 9 A. I said it must have been. I did
 10 attend an executive leadership team meeting in
 11 Whistler.
 12 Q. Do you remember any women being
 13 present there?
 14 A. I don't recall, no.
 15 Q. What was discussed in that meeting?
 16 A. It was a -- it was a lot of strategy.
 17 I mean, I --
 18 Q. Discussions about who were going to
 19 be retained, who were going to be let go?
 20 A. No. No. It was -- I -- from -- from
 21 -- from my recollection, it -- it wasn't that
 22 type of meeting. It was about the strategy of
 23 the company.
 24 Q. Was it about the reorganization?
 25 A. I don't remember if -- if we

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1 D. Berardo
 2 Q. Okay. Do you feel that you were
 3 doing more in this situation than a mall cop,
 4 whose job was to observe and report?
 5 MR. SULLIVAN: Don't answer that.
 6 That's an insulting question. Don't answer
 7 that question.
 8 Move on.
 9 BY MR. THOMAS:
 10 Q. Did you do anything -- did you do
 11 anything more in this case besides observe and
 12 report?
 13 A. Clearly. We investigated.
 14 Q. You observed and you reported, but
 15 you didn't take any action, did you?
 16 MR. SULLIVAN: Objection to form.
 17 THE WITNESS: I don't recall which
 18 action we took. We had a -- we made a
 19 determination, which is action.
 20 BY MR. THOMAS:
 21 Q. And the action and determination was
 22 there was nothing -- there was nothing wrong
 23 here?
 24 A. There was no discrimination that
 25 was -- that was intended here, correct.

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1 D. Berardo
 2 discussed any -- any reorganization. I don't
 3 recall.
 4 Q. Let me ask you did Amy Rathbun ever
 5 complain to you about her treatment at the
 6 company?
 7 A. Never.
 8 Q. And you wouldn't consider her
 9 comments to you on Exhibit 36 an example of
 10 complaining about that; right?
 11 A. I don't -- I don't remember our
 12 conversation specifically, so I can't even
 13 answer that question.
 14 Q. But she was one of the ones you
 15 interviewed; right?
 16 A. That's -- that -- from my
 17 recollection, yes.
 18 Q. And she interpreted Tom Kenny's
 19 comments in a negative way; right?
 20 A. That's what it says here, yes.
 21 Q. And that she knows that's how Tom
 22 Kenny is; right?
 23 A. They know how TK is. That's what it
 24 says, yes.
 25 Q. And you -- and you don't consider

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1 D. Berardo
 2 that her complaining about being -- feeling
 3 discriminated against?
 4 A. I don't recall our conversation, our
 5 specific conversation. I -- I know Amy and I
 6 had a lot of conversations, and -- and never
 7 once did it come up that she ever felt or
 8 interpreted comments as discriminatory.
 9 Q. Let's go now to Exhibit 38 and the
 10 answer to interrogatory 15, which is on
 11 page 17. If you go to the last sentence, it
 12 talks about who was at the meeting when Thomas
 13 Kenny made his comments. Do you see that?
 14 A. What page are we looking at? Sorry.
 15 Q. Page 17.
 16 A. Oh, 15 here?
 17 MS. LESTRADE: Yeah.
 18 THE WITNESS: Number 15?
 19 MR. SULLIVAN: Yes.
 20 THE WITNESS: Okay.
 21 MR. SULLIVAN: I think the question
 22 is on the prior page.
 23 THE WITNESS: Okay.
 24 BY MR. THOMAS:
 25 Q. All right. The culture that exists

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1 D. Berardo
 2 A. Because you're -- you're making the
 3 assumption that no one would come or raise
 4 issues at Absolute, and that was the culture.
 5 Q. No one came or raised issues about
 6 Thomas Kenny's comment, did they? None of
 7 those people?
 8 A. About his comment, no.
 9 Q. That's the kind of culture that
 10 existed at Absolute, isn't it?
 11 MR. SULLIVAN: Objection to form.
 12 THE WITNESS: It -- that is -- I -- I
 13 don't agree with what you're saying.
 14 BY MR. THOMAS:
 15 Q. Why is -- why is -- why is that
 16 not -- is it consistent with the culture at
 17 Absolute or not consistent?
 18 MR. SULLIVAN: Objection to form.
 19 THE WITNESS: We have -- there --
 20 there was numerous times where people have
 21 come to raise concerns about various
 22 different issues, so it's not indicative of
 23 the culture.
 24 BY MR. THOMAS:
 25 Q. So this was a -- this was surprising,

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1 D. Berardo
 2 at Absolute resulted in none of those people
 3 telling you what Thomas Kenny said about the
 4 hiring criteria at Absolute; correct?
 5 MR. SULLIVAN: Objection to form.
 6 THE WITNESS: That's not correct.
 7 BY MR. THOMAS:
 8 Q. Did -- did any of them come to you
 9 and tell you --
 10 MR. SULLIVAN: Objection --
 11 BY MR. THOMAS:
 12 Q. -- without you asking them first?
 13 MR. SULLIVAN: Objection to form.
 14 THE WITNESS: No one told me about
 15 those comments.
 16 BY MR. THOMAS:
 17 Q. Okay. And that's consistent with how
 18 things happened at Absolute, isn't it?
 19 MR. SULLIVAN: Objection to form.
 20 THE WITNESS: That's incorrect.
 21 BY MR. THOMAS:
 22 Q. It's inconsistent?
 23 A. No, I said your statement is
 24 incorrect.
 25 Q. Okay. Why is it incorrect?

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1 D. Berardo
 2 that people didn't come to you about this?
 3 MR. SULLIVAN: Objection to form.
 4 THE WITNESS: I don't -- I don't
 5 remember my feelings.
 6 BY MR. THOMAS:
 7 Q. Sitting here today, are you surprised
 8 that people did not come to you about it?
 9 MR. SULLIVAN: Objection to form.
 10 BY MR. THOMAS:
 11 Q. Given the culture at Absolute at the
 12 time?
 13 MR. SULLIVAN: Objection to form.
 14 THE WITNESS: Do I find it
 15 surprising? I -- I think -- I think I
 16 mentioned before I would have liked -- you
 17 know, I would have appreciated if someone
 18 would have raised it to me.
 19 BY MR. THOMAS:
 20 Q. My question to you is is it
 21 consistent with Absolute culture that no one
 22 came forward?
 23 A. I think I --
 24 MR. SULLIVAN: Objection to form.
 25 THE WITNESS: I've already answered

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1 D. Berardo
 2 that question numerous times.
 3 BY MR. THOMAS:
 4 Q. And your answer is that it's
 5 inconsistent; correct?
 6 MR. SULLIVAN: Objection to form.
 7 THE WITNESS: The -- no one -- no one
 8 coming to me was inconsistent with what the
 9 culture generally was at Absolute.
 10 BY MR. THOMAS:
 11 Q. Were you aware at that Whistler --
 12 that Whistler meeting about employees that
 13 Absolute wanted to retain and intend to stay
 14 on?
 15 A. I don't -- I don't recall the
 16 conversation, off the top of my head.
 17 Q. Do you remember a point in time where
 18 Ms. Piehler was investigated regarding the
 19 Department of Education, the DOE?
 20 A. Yeah.
 21 Q. Tell me what you remember about that.
 22 A. That someone had raised concerns
 23 that -- that --
 24 Q. Who was that -- who was that someone?
 25 A. So I think, originally -- and -- and

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1 D. Berardo
 2 you remember sitting in on?
 3 A. I don't -- I don't recall off the top
 4 of my head.
 5 Q. Were you aware that regional
 6 directors are generally not responsible for
 7 recording orders on sales in their region?
 8 A. They would ultimately be responsible
 9 because they have people reporting in to them,
 10 so they do have the ultimate responsibility.
 11 Q. But they're -- but you understand
 12 they're not the ones responsible for entering
 13 the sales or the orders; correct?
 14 A. Well, the -- the data entry? They
 15 wouldn't -- I -- to my knowledge, they
 16 wouldn't be, actually, data-inputting the
 17 numbers into the system. That wouldn't be
 18 their --
 19 Q. Or deciding where they should go;
 20 correct?
 21 A. No, ultimately -- so -- ultimately, I
 22 believe that's their responsibility. That's
 23 just my understanding of it. I -- I -- I was
 24 not in sales ops, and I didn't really have
 25 visibility into how business was booked,

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1 D. Berardo
 2 this is -- my -- my memory may be failing me,
 3 so I -- I want to make sure I say that. But I
 4 think it was -- they didn't come directly to
 5 me, but -- but they -- but it was -- it was
 6 Matt Meanchoff. He raised it to someone. It
 7 could have been -- it was someone in finance,
 8 perhaps. It could have been Errol; it could
 9 have been Lee. I'm not sure. About Mary and
 10 her team booking business in a certain way,
 11 booking it as new business versus renewal
 12 business.
 13 Q. Did you participate in the
 14 investigation of the DOE issue?
 15 A. Limitedly.
 16 Q. What -- tell -- describe your role.
 17 A. So from -- from what I recall, I had
 18 sat on -- I sat -- sat on an interview or two,
 19 but it was largely a -- it was largely a
 20 number. So they were -- they were trying to
 21 find out -- trying to find out how these
 22 numbers got booked into where. So it was
 23 largely, I think, run by finance. Perhaps
 24 legal. I don't recall specifically.
 25 Q. Who -- who do -- what interviews do

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1 D. Berardo
 2 specifically. But -- but the regional --
 3 regional directors would -- would ultimately
 4 be responsible for the team that they have
 5 under them.
 6 Q. Did you know that Absolute
 7 investigated Mary Piehler and her subordinate,
 8 Charles Springgay, in relation to the issue of
 9 the DOE?
 10 A. Yes.
 11 Q. And what is the race of Charles
 12 Springgay?
 13 A. I mean, I don't know the specific
 14 race. He is -- he --
 15 Q. African American?
 16 A. No. Charles Springgay would be --
 17 would be of Asian decent, perhaps.
 18 Q. Do you know or not know?
 19 A. I mean, I -- I'm -- I would only
 20 visually -- be visually observing. So I don't
 21 know for certain what his background was.
 22 Q. Fair to say that he's a racial
 23 minority?
 24 A. It depends how you define racial
 25 minority. In --

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2 Q. As an HR person.

3 A. In Vancouver -- in Vancouver, he
4 would not be considered a racial minority.

5 Q. In the United States, would he be
6 considered a racial minority?

7 MR. SULLIVAN: Objection to form.

8 THE WITNESS: I believe so.

9 BY MR. THOMAS:

10 Q. Now, Mary Piehler and Charles
11 Springgay were investigated, but Mike Kenny -
12 Mike Kenny and his subordinate, Justin
13 Peacock, weren't investigated as part of this;
14 correct?

15 A. I don't --

16 Q. DOE.

17 A. I don't recall. I -- I don't know
18 the specifics. Or recall the specifics.

19 Q. Do you have any reason to believe
20 that Mike Kenny was investigated?

21 A. I don't even know if he was -- he was
22 employed at that time. I don't know. I don't
23 -- I don't recall.

24 Q. Do you have any reason to believe he
25 was investigated?

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2 A. I don't recall.

3 Q. Why weren't Mike Kenny's commissions
4 held on his DOE orders?

5 MR. SULLIVAN: Objection to form.

6 THE WITNESS: I don't know.

7 BY MR. THOMAS:

8 Q. But Mary Piehler's were; correct?

9 MR. SULLIVAN: Objection to form.

10 THE WITNESS: I -- I don't recall the
11 specifics on -- on -- on that.

12 BY MR. THOMAS:

13 Q. Do you remember the time Mary
14 Piehler's commissions were withheld?

15 A. If you're asking me to answer with
16 certainty, I can't answer with certainty. I
17 don't remember.

18 Q. What is your recollection right now?

19 A. My recollection from -- from -- from
20 what I remember is that there was a number of
21 people who had their commission withheld
22 during the investigation. I --

23 Q. Who were -- who were they?

24 A. Well, so -- so under investigation, I
25 think it was Charles, Mary, and I think it was

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1 D. Berardo

2 Justin Peacock. Those were kind of --

3 Q. But not Ian Dunton, and not Mike
4 Kenny; correct?

5 A. I don't remember. Perhaps. I -- I
6 don't know.

7 Q. Did you approve of not paying Mary
8 her commissions for the DOE order -- for the
9 DOE orders, even though the investigation had
10 not been completed?

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: Did I approve us --
13 Hyperwallet not paying -- sorry, did I
14 approve Absolute not paying her
15 commissions?

16 BY MR. THOMAS:

17 Q. Yes.

18 A. That wouldn't have been my
19 determination.

20 Q. Were you involved in the
21 determination?

22 A. I don't recall.

23 Q. Why would someone's commission --
24 from an HR perspective, why would someone's
25 commissions be withheld when the investigation

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1 D. Berardo

2 had not even been completed?

3 MR. SULLIVAN: Objection to form.

4 THE WITNESS: So I -- I can only -- I
5 can only -- I can only speculate, like --

6 BY MR. THOMAS:

7 Q. No, I'm not asking you to speculate.

8 As an HR manager at Absolute --

9 A. Right.

10 Q. -- why would an employee's
11 commissions be held under your tenure when the
12 investigation into the issue had not been
13 completed?

14 A. So --

15 MR. SULLIVAN: Objection to form.

16 THE WITNESS: -- are we talking about
17 in general? Or are we talking about the
18 specific incident?

19 BY MR. THOMAS:

20 Q. We'll take -- we'll take DOE
21 specifically.

22 A. Because I don't recall -- I don't
23 recall why or why not for that --

24 Q. Would there ever -- would there ever
25 be a reason to withhold someone's commissions

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2 when an investigation hadn't been completed,
3 again, in your role as head of HR at Absolute?

4 MR. SULLIVAN: Objection to form.

5 THE WITNESS: During an
6 investigation, if we were investigating
7 something, I think it -- it would be
8 justified to withhold commissions.

9 BY MR. THOMAS:

10 Q. Would it be justified to withhold
11 some people's commissions but not others?

12 MR. SULLIVAN: Objection to form.

13 THE WITNESS: I mean -- I mean, it
14 would depend on the circumstances. I don't
15 know how to answer that.

16 BY MR. THOMAS:

17 Q. What about withholding them from the
18 minority female employees, but paying them to
19 the white male employees? Would that be
20 acceptable?

21 A. No, it wouldn't --

22 MR. SULLIVAN: Objection to form.

23 THE WITNESS: It would not be
24 acceptable to withhold or not withhold
25 based on race or gender.

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2 BY MR. THOMAS:

3 Q. Would that be consistent with
4 Absolute's culture, though?

5 A. Well --

6 MR. SULLIVAN: Objection to form.

7 THE WITNESS: -- absolutely not.

8 BY MR. THOMAS:

9 Q. Isn't it true that Mary Piehler was
10 totally exonerated on the issue of the DOE
11 orders?

12 MR. SULLIVAN: Objection to form.

13 THE WITNESS: I don't know if I would
14 use those terms. I -- from what I recall,
15 it was determined that -- that a definitive
16 determination couldn't be made, and so the
17 commissions were paid out as was booked.

18 BY MR. THOMAS:

19 Q. Isn't it true that Todd Awtry
20 acknowledged that he had been told that that's
21 how the commissions were paid?

22 MR. SULLIVAN: Objection to form.

23 BY MR. THOMAS:

24 Q. Were going to be paid?

25 A. I don't recall.

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2 Q. Well, then, how can -- how can you
3 not recall that and recall that there was not
4 complete exoneration for Mary Piehler?

5 MR. SULLIVAN: Objection to form.

6 THE WITNESS: Well, I -- I recall --
7 well, I don't recall that -- you're asking
8 me -- you're asking me a specific question
9 about Todd. I don't remember that
10 interaction with Todd.

11 BY MR. THOMAS:

12 Q. Do you remember there -- was there
13 any wrongdoing associated with Mary Piehler
14 coming out of the DOE investigation?

15 A. I mean, I...

16 Q. That you recall?

17 A. That I recall?

18 Q. Yeah.

19 A. Not that I recall.

20 Q. It's true that Todd Awtry tried to
21 get Mary Piehler fired over the DOE
22 commissions; correct?

23 MR. SULLIVAN: Objection to form.

24 THE WITNESS: Not that I recall, no.

25 MR. THOMAS: If the court reporter

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2 could show the witness Awtry Exhibit 73 as
3 well as Exhibit 74.

4 THE WITNESS: Just while we're doing
5 that, can I just take a quick break?

6 MR. SULLIVAN: Sure.

7 VIDEOGRAPHER: Going off the record.
8 The time is 3:49.

9 (PROCEEDINGS RECESSED AT 3:49 P.M.)

10 (PROCEEDINGS RECONVENED AT 3:57 P.M.)

11 VIDEOGRAPHER: Back on the record.

12 The time is 3:57.

13 BY MR. THOMAS:

14 Q. Okay. Let me show you what has been
15 marked as Exhibit 73 and 74. Once you've had
16 a chance to read them, let me know.

17 A. Sure. Okay.

18 Q. Does -- do these exhibits refresh
19 your recollection as to whether Todd Awtry was
20 trying to get Mary Piehler fired over the DOE
21 issue?

22 A. Does it -- does it -- I mean, I don't
23 know how to answer that question. I mean,
24 I -- I see here he asks -- he asks us:

25 Do we have enough grounds to -- for

50 (Pages 194 to 197)

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termination for all three?"

Q. And what does he say immediately after that?

A. So he says:

I believe we do, but I want others' thoughts."

Q. So does that suggest to you that Todd Awtry was trying to get Mary Piehler fired over the DOE issue?

A. No, I would say that he was asking for multiple people's opinions on if there was enough grounds for termination.

Q. What was his opinion?

A. Well, he says:

I believe we do, but want others' thoughts."

Q. Yeah, so what was his opinion?

A. "I believe we do, but we want other's thoughts."

Q. No, no, I didn't ask you -- what -- what was his opinion. His opinion was "I believe we do"; correct?

A. Oh.

MR. SULLIVAN: Objection to form.

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THE WITNESS: Sure. "I believe we do."

BY MR. THOMAS:

Q. All right. And then what did you -- do you remember responding to him at all?

A. I don't recall off the top -- I don't -- I don't recall if I responded or -- or didn't. I don't know.

Q. Okay. Was this the email you saw in preparation for this deposition today?

A. I don't -- I mean, thinking back, I think at one point, we did look at this email on Exhibit 73, but not -- I don't recall looking at 74. I could be wrong.

Q. And on 74, he pushes again, doesn't he, for an answer to his question as to whether Mary Piehler can be fired, and he thought that there were grounds to do so. Right?

MR. SULLIVAN: Objection to form.

THE WITNESS: Response to my question. I don't know what he was referring to.

BY MR. THOMAS:

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Q. What question had he asked the day before to the same recipients?

A. So this was June 27th, 2014, at 10:33 a.m. And then June 26th at 5:03 to Lee, Michael, Matt -- well, Matt's on this email, but not on this email. So it's not the same recipients. But on the --

Q. Almost -- almost -- almost identical recipients. Fair to say?

A. And here he includes Michael Kenny and Thomas -- or, sorry, Michael Kenny was involved -- or was in the June 26th email, but Thomas --

Q. It's virtually the same -- it's virtually the same recipients. And the next morning, he had [indiscernible] demanding an answer to his question, didn't he?

MR. SULLIVAN: Objection to form.

THE WITNESS: So I can't answer that because I don't know if this is related.
BY MR. THOMAS:

Q. And was...

A. Like, the --

Q. It's strange, isn't it --

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A. Okay.

Q. -- that Todd Awtry is trying to get Mary Piehler fired, which is several months before Mary Piehler had told him about how the commissions would be allocated, and he thanked her for the heads-up. Right?

MR. SULLIVAN: Object --

BY MR. THOMAS:

Q. Isn't that weird?

MR. SULLIVAN: Objection to form.

THE WITNESS: I think he was asking -- he was asking if there was enough grounds for termination.

BY MR. THOMAS:

Q. But why should there be enough grounds when three -- when, several months before, he was told by Mary this is the way things were going to be done, and he thanked her for it?

MR. SULLIVAN: Objection to form.

THE WITNESS: I'm sorry. What exhibit was at that? Just to --

MR. THOMAS: If the court reporter could show him Exhibit Awtry 71.

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THE WITNESS: Okay.

BY MR. THOMAS:

Q. So March 17th, Todd is told exactly how this allocation is going to go. He thanks Mary Piehler for it. And in June, he's trying to get her fired over it. Does that -- does that concern you at all?

A. Well --

MR. SULLIVAN: Objection to form.

THE WITNESS: -- all I see is -- is he -- him saying "thanks for the -- for heads -- thanks for heads-up."

BY MR. THOMAS:

Q. Okay.

A. I don't see any --

Q. Does this concern you at all that he knew this was how the DOE was going to be allocated; he said "thanks for the heads-up"; and then, several months later, was trying to fire Mary Piehler over it?

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. Does that concern you?

A. Well, I don't -- I don't know if he

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was trying to fire Mary. He asked, "Do we have grounds enough for termination?"

Q. Does it concern you that he thought there were grounds enough for termination when, several months before, he had been told how the allocation was going to go, and he thanked Mary Piehler for the heads-up?

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. Does that concern you?

A. I -- I don't know if he -- I don't know if he had agreed to this or he had forgot about this. You know...

Q. My question to you is does it concern you?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't remember if it concerned me or not.

BY MR. THOMAS:

Q. Does it concern you sitting here today?

MR. SULLIVAN: Objection to form.

THE WITNESS: Well, knowing the facts, it doesn't concern me.

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BY MR. THOMAS:

Q. Why?

A. Just because this email seems pretty ambiguous.

Q. How is it ambiguous when it precisely describes the issue that he accused her of doing that resulted -- that resulted in her termination?

MR. SULLIVAN: Objection to form.

THE WITNESS: Well, I don't -- I

don't see him agreeing to -- to what she is proposing.

BY MR. THOMAS:

Q. You don't think "thanks for the heads-up" is an agreement that the allocation is okay?

A. I don't -- I don't think that.

When -- when someone says "thanks for the heads-up," it doesn't say "I agree," no.

Q. Okay. It -- can you think of any time in the company where a woman's word has been believed over a man's --

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

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Q. -- when you were the head of HR at Absolute?

A. I mean, I -- absolutely, but I -- I can't think of specifics.

Q. One example. Just give me one.

A. I mean, I -- you're -- you're asking me something from five years -- five years-plus ago.

Q. Yeah. Can you remember any time in the entire time you worked at Absolute for the five years that HR ever accepted the word of a man -- of a woman over a man?

MR. SULLIVAN: Objection to form.

THE WITNESS: I -- I -- off the top of my head, I can't recall situations on either -- either way. I mean...

BY MR. THOMAS:

Q. Well -- well, what about -- well, the last several we've been over, you have accepted the man's word over the woman's, no doubt. Right?

MR. SULLIVAN: Objection to form.

THE WITNESS: Sorry -- sorry, what are you referencing?

52 (Pages 202 to 205)

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BY MR. THOMAS:

Q. I'm referencing Thomas Kenny's comment that made women feel uncomfortable, and they said that was typical of him, and nothing happened to Thomas Kenny, and -- because it was believed it was not discrimination. I'm talking here about Todd Awtry approving the commission payments to Mary Piehler and trying to get her fired two months later and you, again, believing, as you sit here today, Todd Awtry over Mary Piehler.

MR. SULLIVAN: Objection.

THE WITNESS: That's --

BY MR. THOMAS:

Q. So those are two examples going that way. Can you think of any examples where a woman has ever been believed at Absolute over a man?

A. So --

MR. SULLIVAN: Objection to form.

THE WITNESS: -- sorry, you -- the way you described that was not accurate.

BY MR. THOMAS:

Q. Okay. Let's -- let's go back to the

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point.

A. Sure.

Q. Give me an example of where a woman's word was believed over a man's at Absolute.

MR. SULLIVAN: Objection to form.

THE WITNESS: You're -- you're -- I mean, you're asking me for -- to -- to come up with specific examples from five years ago about conversations --

BY MR. THOMAS:

Q. Any specific example.

A. I don't --

Q. One.

A. I -- I just don't -- I just can't think of anything right now.

Q. Okay. Now -- and you're head of HR, so you know this is going on here, and you don't even think it's worthy of investigating why Todd Awtry, several months later, is trying to get Mary Piehler fired, even though he knew how the commissions were being done several months earlier?

MR. SULLIVAN: Objection to form.

THE WITNESS: So he has -- he has

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asked the questions not just for Mary, but "do we have enough grounds for termination for all three?"

BY MR. THOMAS:

Q. Okay. But Mary Piehler is one of them.

A. Correct.

Q. Right? Can we agree on that?

A. Yeah. Yes, we can.

Q. Okay. So -- and two months -- two or three months before, Todd Awtry said "thanks for the heads-up."

A. He said "thanks --"

Q. So --

A. "-- for the -- thanks for --"

Q. -- [indiscernible] --

A. "-- the heads-up."

Q. Let's just take that back. When he received that email, if he thought that what Mary Piehler was doing was wrong, it should have raised a red flag in your mind that he was setting her up for termination several months later.

MR. SULLIVAN: Objection to form.

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THE WITNESS: I don't have -- know how one equals the other. I think it was determined --

BY MR. THOMAS:

Q. So let's -- okay. [Indiscernible] --

MR. SULLIVAN: Wait a minute.

BY MR. THOMAS:

Q. -- [indiscernible] --

MR. SULLIVAN: Had you --

BY MR. THOMAS:

Q. -- [indiscernible] --

MR. SULLIVAN: -- finished your -- had you finished your answer?

THE WITNESS: Yes.

BY MR. THOMAS:

Q. Well, if you don't understand the -- if you don't understand the question, let me -- let me rephrase it.

MR. SULLIVAN: I don't think he said he didn't understand it. He just hadn't finished answering.

MR. THOMAS: Can the court reporter read back his answer.

MR. SULLIVAN: The portion before you

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2 cut him off?

3 MR. THOMAS: Yeah.

4 MR. SULLIVAN: Okay.

5 THE COURT REPORTER: I actually
6 didn't get it because of the interruptions.

7 BY MR. THOMAS:

8 Q. So let me tell you how one equals the
9 other here. Mary Piehler sent this email to
10 Todd Awtry in March. If Todd Awtry thought
11 this was -- this commission system was grounds
12 for termination, what he was doing was setting
13 her up and waiting until several months later
14 and then saying "I think we have grounds to
15 fire all three," would that concern you?

16 MR. SULLIVAN: Objection to form.

17 THE WITNESS: I -- I just don't agree
18 with your assessment, so...

19 BY MR. THOMAS:

20 Q. Okay. And you don't agree with my
21 assessment, because it appears as though Todd
22 is saying it's fine; this commission system is
23 fine. Right?

24 MR. SULLIVAN: Objection to form.

25 THE WITNESS: He says "thanks for

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2 heads-up."

3 BY MR. THOMAS:

4 Q. What -- what -- what is he doing
5 there? Is he -- does he think the commission
6 system is okay or not okay?

7 MR. SULLIVAN: Objection to form.

8 THE WITNESS: I don't know.

9 BY MR. THOMAS:

10 Q. Okay. Is that something you should
11 have looked at, given the fact that he tried
12 to fire the employee two months later?

13 MR. SULLIVAN: Objection to form.

14 THE WITNESS: From my recollection,
15 the reason why this didn't move forward and
16 was ambiguous was because of this email,
17 so...

18 BY MR. THOMAS:

19 Q. So why didn't you look at what Todd
20 Awtry -- what Todd Awtry was up to?

21 MR. SULLIVAN: Objection to form.

22 THE WITNESS: There were -- there
23 were -- I -- I didn't -- I didn't have any
24 concerns. I mean...

25 BY MR. THOMAS:

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2 Q. You don't have any concerns when an
3 employee -- when a manager is trying to fire
4 an employee when he shouldn't, and he knows
5 that -- he knows that he's not telling -- that
6 the employee is doing things correctly?

7 MR. SULLIVAN: Objection to form.

8 BY MR. THOMAS:

9 Q. That doesn't concern you?

10 MR. SULLIVAN: Objection to form.

11 THE WITNESS: Well -- well, that's
12 why we had this investigation. Because the
13 company investigated, and then it was
14 determined, because of this email, that the
15 allegation -- or the -- how the -- the
16 businesses were booked, it was -- it was
17 ambiguous, because this email that Mary had
18 sent to Todd that said "thanks for
19 heads-up."

20 BY MR. THOMAS:

21 Q. And you didn't bother -- it didn't
22 concern you at all to investigate what was --
23 what Todd was up to?

24 MR. SULLIVAN: Objection to form.

25 THE WITNESS: Well, I -- I -- from

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1 D. Berardo

2 what I recall, Todd -- Todd forgot --
3 forgot about this email.

4 BY MR. THOMAS:

5 Q. Well, forgot? Or did you investigate
6 whether he truly forgot? Or did you look at
7 it at all? Or did you just say, "oh,
8 whatever."

9 A. How would we --

10 Q. "A man is trying -- I hear a man is
11 trying to fire a woman at Absolute. That --
12 we didn't fire her, so we're not even going to
13 bother looking into what the man is doing."

14 A. So --

15 MR. SULLIVAN: Objection to form.

16 THE WITNESS: -- just -- just to
17 clarify again, he was asking for
18 termination of all three, and there's --

19 BY MR. THOMAS:

20 Q. Okay. But [indiscernible] --

21 A. -- two men --

22 Q. -- about Mary --

23 A. There's two men and one woman, so --

24 Q. M'mm-hmm?

25 A. -- so I -- no, I mean, the -- the

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connection -- I mean, I didn't --

Q. You didn't draw that?

A. I didn't draw that --

Q. You, as head of -- you, as head of HR, didn't draw the connection?

A. I -- I -- no, I didn't draw the connection, and I -- and I still wouldn't draw it today.

Q. You didn't draw the connection even after Ms. Piehler said that Todd Awtry was out to get her, didn't you?

MR. SULLIVAN: Objection to form.

THE WITNESS: Out to get her?

BY MR. THOMAS:

Q. Yeah.

A. I -- I don't recall her saying that. I mean, maybe she -- she did. I don't...

Q. And you didn't investigate her complaints about Todd Awtry saying that she was stealing and lying falsely? You didn't even bother to look at that?

MR. SULLIVAN: Objection to form.

THE WITNESS: This whole investigation was around that.

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BY MR. THOMAS:

Q. Okay. And what did you do to counsel Todd Awtry about his conduct in this situation?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, I'm -- I'm -- so I'm -- I'm certain that there were conversations with Todd. I -- I don't recall specifically what was said to him.

BY MR. THOMAS:

Q. Did they include saying to him that he should not be treating his female subordinates the way he had been?

A. No.

MR. SULLIVAN: Objection to form.

THE WITNESS: No, there was no conversations.

UNIDENTIFIED SPEAKER: Can we just [indiscernible] --

BY MR. THOMAS:

Q. Sorry, go ahead.

A. There was no conversations of that nature.

Q. Because that was not something you

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even investigated, was it?

MR. SULLIVAN: Objection to form.

THE WITNESS: That he was

discriminating against Mary because of her gender?

BY MR. THOMAS:

Q. Correct.

A. It was not something we investigated because it was not something that we thought was relevant in the situation.

Q. It never crossed your mind, never raised a red flag; right?

MR. SULLIVAN: Objection to form.

THE WITNESS: No, there -- there were three people involved in this situation, and two were male.

BY MR. THOMAS:

Q. Oh, so that means that that -- it couldn't be discrimination against Mary Piehler because of her gender?

MR. SULLIVAN: Objection to form.

THE WITNESS: Well, I mean, no, I'm not saying that, but I'm -- I'm saying that there -- there was -- there would be no red

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flags in my head that this was because of her gender. That's what I'm telling you.

BY MR. THOMAS:

Q. Even when she complained about it, it raised no red flags?

A. Complained that she was discriminated on because of her gender? Is that what you're asking me?

Q. We'll -- we'll come back to that.

A. Okay.

MR. THOMAS: Let's go to -- if the court reporter could show the witness Exhibit Awtry 76.

THE WITNESS: Okay.

BY MR. THOMAS:

Q. Just to get the timeline straight here, on June 26th, Todd Awtry is saying that he believes there's enough grounds to terminate Mary Piehler. Ultimately, she's not terminated because there -- she didn't do anything wrong. And then on July 2nd, what does she want to -- what does he want to do to Mary Piehler?

A. So from reading this email, he wants

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1 D. Berardo
2 to put her on a performance improvement plan
3 because of her Manage and Service numbers.

4 Q. So within five days of not being able
5 to fire her, he then switches reasons and
6 wants to put her on a PIP for something else;
7 right?

8 MR. SULLIVAN: Objection to form.

9 THE WITNESS: That's correct.

10 BY MR. THOMAS:

11 Q. And what do you tell him?

12 A. So I -- I asked him -- I asked him
13 about:

14 Would we be singling her out by
15 putting her on a PIP? We just came off an
16 investigation, so things are a little
17 sensitive. Are there any RDs in the same
18 boat?"

19 Q. And were you the one who stopped the
20 PIP from going forward?

21 A. I mean, I don't recall specifically,
22 but, I mean, I -- you know, judging from this
23 email, it seems like, you know, I may have
24 advised against it. I -- I don't know what
25 the sequence of events were after this email

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2 or what was back and forth after this specific
3 email.

4 Q. And just a few -- few moments ago,
5 you said you didn't think that Mary Piehler
6 was being treated differently because of her
7 gender, but --

8 A. Correct.

9 Q. -- in an email a week later, you say:

10 My only concern would be if we are
11 singling her out."

12 So it did occur to you that you were -- that
13 Mary Piehler was being singled out, didn't it?

14 MR. SULLIVAN: Objection to form.

15 THE WITNESS: Singling -- yeah,
16 singled out compared to her peers, the
17 other regional directors.

18 BY MR. THOMAS:

19 Q. And did you conduct any investigation
20 as to whether Mary Piehler was being singled
21 out by Todd Awtry?

22 A. Well, I had -- I asked the question,
23 and he provided me the numbers.

24 Q. And then did you conduct any further
25 investigation as to -- I mean, would you be

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1 D. Berardo
2 concerned to find out that a manager was
3 singling out one of his subordinates?

4 A. Well, for performance, that wouldn't
5 concern me.

6 Q. Okay. But you, in this case,
7 indicated that the PIP shouldn't go forward;
8 correct?

9 A. I -- I don't think I indicated that.
10 I -- I asked the question.

11 Q. Okay. And so did you do anything
12 else to follow up on your question about
13 whether she was being singled out after you
14 got Todd's answer?

15 A. I don't -- I don't recall what
16 happened after Todd responded to me. I don't
17 remember.

18 Q. You don't remember doing any
19 investigation as to whether it was for
20 discrimination or other reasons; right?

21 A. No, there was -- there was no
22 discrimination brought to me, so I don't
23 recall any sort of investigations around
24 discrimination. Based on -- you know, based
25 on gender or -- or any protected grounds.

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2 This was about performance.

3 Q. Well, when a -- when a manager is
4 singling out
5 a woman on his staff for a PIP and a
6 termination for reasons that he had been
7 informed were okay, it never -- it doesn't --
8 that -- discrimination didn't cross your mind?
9 That's the type of HR culture you were running
10 there?

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: The -- the PIP was
13 concerning her performance, so he may have
14 been singling her -- her out based on her
15 performance with her peers, and that
16 happens all the time.

17 BY MR. THOMAS:

18 Q. You -- it didn't -- it didn't strike
19 you as coincidental that, within a week of
20 Todd failing to get Mary fired on the DOE
21 issue, that he's coming back and trying to put
22 her on a PIP for something else?

23 MR. SULLIVAN: Objection to form.

24 THE WITNESS: Well, I mean, the --
25 the -- the new fiscal year starts in July

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1 D. Berardo
2 of every year, I believe, from Absolute.
3 So, I mean, it -- it -- it didn't -- it
4 didn't concern me about any sort of
5 protected discrimination.

6 MR. THOMAS: Could you read --
7 Jessica, could you read the question back
8 to Mr. Berardo.

9 (REPORTER READ BACK)

10 MR. SULLIVAN: Objection to form.

11 THE WITNESS: I -- I wouldn't say
12 it's coincidental, but, obviously, I had a
13 -- I had a concern, and I asked the
14 question. So I had a concern enough that I
15 asked the question about her performance.

16 BY MR. THOMAS:

17 Q. All right. Have you ever heard of an
18 employee being put on a PIP for following a
19 CEO's direction?

20 MR. SULLIVAN: Objection to form.

21 THE WITNESS: A CEO's direction?

22 BY MR. THOMAS:

23 Q. Yes.

24 A. I mean, not off the top of my head.

25 Q. It would be kind of strange, wouldn't

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1 D. Berardo
2 it?

3 MR. SULLIVAN: Objection to form.

4 THE WITNESS: To follow an order from
5 a CEO, and then be put on a PIP because you
6 followed that order?

7 BY MR. THOMAS:

8 Q. Yeah.

9 A. I -- yeah, I would say that would be
10 strange.

11 Q. Are you aware that Geoff Haydon said
12 that he wanted the company to focus on selling
13 Computrace and only sell Manage and Service to
14 current clients?

15 MR. SULLIVAN: Objection to form.

16 THE WITNESS: I mean, I don't -- I
17 don't recall that, but...

18 BY MR. THOMAS:

19 Q. Do you have any reason to doubt that
20 was true?

21 A. No.

22 Q. And what is Mr. Awtry faulting
23 Ms. Piehler for here as to why she was -- why
24 she was being singled out?

25 A. Well, this was Manage and Service.

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2 MR. THOMAS: Now, let's -- if the
3 court reporter could mark Exhibit Berardo
4 L. And, Jessica, are you -- when I'm doing
5 new exhibits that you have, are you going
6 off numerically from where we left off at
7 85?

8 THE COURT REPORTER: Yes, if that's
9 what you would like.

10 MR. THOMAS: Perfect.

11 THE COURT REPORTER: Okay.

12 MR. THOMAS: Let's go off the record
13 for a second.

14 VIDEOGRAPHER: Going off record. The
15 time is 4:23.

16 (PROCEEDINGS RECESSED AT 4:23 P.M.)

17 (PROCEEDINGS RECONVENED AT 4:25 P.M.)

18 VIDEOGRAPHER: Back on the record.

19 The time is 4:25.

20 BY MR. THOMAS:

21 Q. Mr. Berardo, you're free to read as
22 much of Exhibit 86 as you would like.
23 However, I'm only going to be really asking
24 you about the forwarding emails from
25 Mr. Awtry. So let me know when you're ready.

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1 D. Berardo
2 A. The -- sorry, the -- the from email
3 from Mr. Awtry?

4 Q. Yeah, where he says:

5 I highlighted a few, but encourage
6 you to read all of it."

7 MS. LESTRADE: Oh. That is not
8 exhibit -- what has been marked as
9 Exhibit 86.

10 MR. THOMAS: Okay. What is the Bates
11 number at the bottom of that, Jessica?

12 Let's -- let's go off the record.

13 VIDEOGRAPHER: Going off record. The
14 time is 4:26.

15 (PROCEEDINGS RECESSED AT 4:26 P.M.)

16 (PROCEEDINGS RECONVENED AT 4:38 P.M.)

17 VIDEOGRAPHER: Back on the record.

18 The time is 4:39.

19 (Exhibit 86 was marked for
20 identification and is attached hereto.)

21 BY MR. THOMAS:

22 Q. All right. Let me start again, Mr.
23 Berardo. Sorry for that confusion there.
24 You're welcome to read as much as Exhibit 86
25 as you would like, which, for the record, is

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D. Berardo

Bates number DEFS08824 to DEFS08830. But I'm only going to really ask you about the very top of the first page, which is Todd sending you this email.

So let me know when you're ready, and I can ask you questions.

A. Sure. I don't -- I don't need to -- unless you want me to read it all, I don't need to read it all, just because you --

Q. No, I --

A. I --

Q. -- don't -- I don't need you to.

A. Okay.

Q. Okay. So, now, just for the -- for the sake of chronology, back at the end of June, very end of June, Todd Awtry says that he thinks he has grounds to fire Mary Piehler. HR gets involved. Mary Piehler is not fired. July 2nd, about a week later, he tries to put Mary Piehler on a PIP. Again, involves HR. And she is not put on a PIP. Then a month later in August, he is forwarding to you an email that Mary Piehler wrote -- oh, what was that? -- 15 months before and -- about Mary

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D. Berardo

Piehler's comments on Todd Awtry and -- and his job.

Why was Todd Awtry forwarding you this email in August?

MR. SULLIVAN: Objection to form.

THE WITNESS: So, from what I recall, he was -- he was -- he was just made -- made aware. He was made aware of this email.

BY MR. THOMAS:

Q. He was just made aware of that email?

A. I mean, from my recollection, he was just --

Q. I will testify to you that -- I will represent to you that his testimony was that he was aware of the email almost --

A. Okay.

Q. -- at the time it was -- it was sent, so --

A. Okay. So -- so my recollection is incorrect. So -- so did he -- had he just received the email? Or he said that he's had this email for a long time?

Q. He said that he had the email for a

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long time.

A. Okay. Fair enough. I -- I don't recall why he sent it to me on the 15th of August.

Q. Was he still trying to get Mary fired?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't recall our conversations about this email.

BY MR. THOMAS:

Q. Or trying to put her in a bad light?

MR. SULLIVAN: Objection to form.

THE WITNESS: That -- that would be more of a question for Todd.

BY MR. THOMAS:

Q. It seems like every couple of weeks or months starting in June, he's on Mary Piehler's tail, singling her out to HR in various ways. Is that fair to say?

MR. SULLIVAN: Objection to form.

THE WITNESS: I wouldn't say singling out, no. That -- that wouldn't be accurate.

BY MR. THOMAS:

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D. Berardo

Q. Well -- well, I think that's the word that you used; right? "Singling out"?

A. Not in that context.

Q. What context -- what context did you not use it -- I mean, what context did you use it in?

A. If I -- if I can see the prior exhibit, then I can -- I can tell you exactly how I was...

Q. Exhibit 70 -- we -- we don't need to do that. We -- we've been through that --

A. Okay.

Q. -- your use of the word -- I -- when I said "singling," I was only, you know, using your phrase.

But why is -- as an HR person, aren't you a little concerned at this point that you've got a manager trying to -- trying to go after one of his employees again and again and again?

MR. SULLIVAN: Objection to form.

THE WITNESS: Are you asking me about this specific email? Or --

BY MR. THOMAS:

58 (Pages 226 to 229)

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D. Berardo

Q. This email with -- what was preceded by the PIP email that was preceded by the termination email. We had three -- three attempts in a row by Todd Awtry to -- to go after Mary Piehler in the space of a month and a half.

MR. SULLIVAN: Objection to form.

THE WITNESS: In my opinion, they were all valid concerns.

BY MR. THOMAS:

Q. Well, the DOE was not a valid concern, was it? She didn't do anything wrong there.

A. So it was -- it was determined that it was inconclusive.

Q. Okay. So that was not a valid concern, was it?

MR. SULLIVAN: Objection to form.

THE WITNESS: It was a valid concern -- when we did the investigation, it was, yes.

BY MR. THOMAS:

Q. Well, was it a valid concern for him who, two months before, knew how the

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D. Berardo

commissions were being allocated?

MR. SULLIVAN: Objection to form.

THE WITNESS: If I can see -- I think we discussed this before, but if we could -- if we want to discuss it again, I -- if I can see the --

BY MR. THOMAS:

Q. Sure.

A. -- prior exhibits.

THE COURT REPORTER: Which number?

BY MR. THOMAS:

Q. I think we can all agree that as of -- if you take a look at Exhibit 71, as of March 17th, Todd Awtry was fully aware of how the commissions at the DOE were going to be allocated; correct?

A. I don't have Exhibit 71 in front of me, sorry. Can we...

Q. We'll get that for you.

A. Thank you. Right. So this is where he said "thanks for heads-up."

Q. Right. Where he was informed of how the commissions for DOE were being done; correct?

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D. Berardo

A. Yeah, Mary -- yeah, Mary was -- was emailing him about that.

Q. And, Mr. Berardo, I don't want to nitpick with you on all of these exhibits. I will just say to you you see all of this going on in the space of a month and a half, and it doesn't occur to you that Todd Awtry was out to get Mary Piehler?

MR. SULLIVAN: Objection to form.

THE WITNESS: That did not cross my mind because, again, these were all --

BY MR. THOMAS:

Q. As even a possibility?

A. These were all legitimate -- legitimate concerns that Todd had towards Mary.

Q. Even as a possibility, it never crossed your mind?

A. No.

Q. Okay. Do you think that that is a common-sense perspective on the situation?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yes.

BY MR. THOMAS:

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D. Berardo

Q. And not only is Todd out to get Mary in each of these situations, but they're all sort of different; right? Tries one; it doesn't work. Tries something else; it doesn't work. Tries something else; it doesn't work. Right?

MR. SULLIVAN: Objection to form.

THE WITNESS: No, I wouldn't characterize it like that.

BY MR. THOMAS:

Q. Okay. And you didn't investigate to see how it should be characterized, did you?

MR. SULLIVAN: Objection to form.

THE WITNESS: Investigate what?

BY MR. THOMAS:

Q. How Todd Awtry was going after Mary Piehler?

A. There was --

MR. SULLIVAN: Objection to form.

THE WITNESS: There was nothing to investigate.

BY MR. THOMAS:

Q. And when you saw the email from Mary Piehler with Jermaine O'Dondow [phonetic] down

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1 D. Berardo
2 below, you didn't recommend Ms. Piehler's
3 termination, did you?

4 A. I don't -- I don't recall what --
5 what was discussed.

6 Q. Do you -- do you recall any
7 discussions that she should be disciplined?

8 A. I don't -- I don't recall our
9 discussions, no.

10 Q. Okay. And you don't recall any
11 discussions that she should be counselled?

12 A. No, I don't recall any discussions.

13 Q. Or terminated?

14 A. I mean, I just don't remember if we
15 had those conversations. I don't know.

16 Q. All right. Let's go to Exhibit 21,
17 if that could be marked.

18 MR. SULLIVAN: Shouldn't need to mark
19 it. It's already been marked.

20 THE COURT REPORTER: So, sorry, am I
21 marking it 87?

22 MR. SULLIVAN: No, it's already been
23 marked as 21.

24 THE WITNESS: Thank you.

25 BY MR. THOMAS:

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1 D. Berardo

2 Q. Why don't you read it over, and when
3 you've had a chance, I will have some
4 questions for you on it.

5 A. Oh, this was in order, actually, from
6 front to back. I read the last -- I will
7 start at the beginning. Okay.

8 Q. All right. Did you take any steps to
9 probe the complaints made by Mary Piehler in
10 this exhibit?

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: I can't recall
13 specifically, but -- but reading through
14 it, it's -- the numbers -- I mean, the
15 numbers seemed like they were system
16 issues, so I likely wouldn't have
17 investigated that.

18 MR. THOMAS: I will request any
19 documentation -- any HR review that was
20 performed of this --

21 THE WITNESS: Not --

22 MR. THOMAS: -- exhibit.

23 BY MR. THOMAS:

24 Q. I will just give one example.

25 A. Not to my recollection.

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1 D. Berardo

2 Q. In the second line, she says:

3 I don't want to be known as a
4 troublemaker."

5 Right?

6 A. Okay.

7 Q. Third line, she says she wants to be
8 paid -- paid fairly. At the bottom paragraph,
9 she refers to a man who's getting paid full
10 value, and she isn't getting commissions and
11 under investigation for selling DOE. Do you
12 see those comments?

13 A. I do, yes.

14 Q. Okay. Did you see them at the -- did
15 you read them at the time?

16 A. I would have, yes.

17 Q. Is this an example of you thinking
18 that Mary Piehler was passionate or difficult
19 to deal with?

20 MR. SULLIVAN: Objection to form.

21 THE WITNESS: I mean, I don't -- I
22 don't recall what I thought when I received
23 the email. I don't remember.

24 BY MR. THOMAS:

25 Q. Didn't you make a comment like that

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1 D. Berardo

2 earlier today? That you thought that Mary
3 could be passionate in her communication?

4 A. I don't -- I don't recall. We can
5 definitely read back what I -- what I wrote
6 [sic], if you like.

7 Q. Well, do you think she -- do you
8 think she was passionate in her -- in her
9 communications?

10 A. Was she -- was she passionate? I
11 mean, she didn't shy away from communicating.

12 Q. Did you -- you talked before about
13 how you had conversations with her, and they
14 would end up going round and round. Do you
15 remember that?

16 A. They would go around in circles
17 sometimes, yes.

18 Q. Is this an example of it going around
19 in circles?

20 A. Well, I don't -- I don't think so.
21 It's one -- it's a -- one email to me. So I
22 can't recall if I went around and around with
23 her.

24 Q. Okay. Turning to the last page, do
25 you see that under number 4, about seven lines

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D. Berardo

down, she says:

All I asked was to be treated the same."

Do you see that?

A. Can you -- so it's, sorry, the second-to-last page?

Q. Second-to-last page. P818, item number 4. Six, seven lines down:

All I asked was to be treated the same."

Do you see that?

A. "All I asked was to be treated the same."

Yeah.

Q. Was that an unfair request from a woman at Absolute?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yeah, I would say it's a -- no, it's a fair request from anyone at Absolute.

BY MR. THOMAS:

Q. Is it a fair request from someone at Absolute that they want to be -- from a woman at Absolute, that she wants to be paid fairly?

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D. Berardo

MR. SULLIVAN: Objection to form.

THE WITNESS: I -- I don't think that -- again, from -- from anyone that -- anyone, it would be valid to say they want to be paid fairly.

BY MR. THOMAS:

Q. And if they take that to HR, that's something that HR should look at; right?

MR. SULLIVAN: Objection to form.

THE WITNESS: If they say that they were paid unfairly because they were female? Or because of gender? Is that what you're asking me?

BY MR. THOMAS:

Q. Well, I'm asking -- let's just start with someone who says "I'm not being paid fairly" and goes to HR. Should HR look at that?

A. We -- it happens all the time, and people's perception of being paid fairly, it's just --

Q. I'm asking whether HR should look at that issue.

A. We should talk to the employee and

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D. Berardo

ask what the employee may be speaking of.

MR. THOMAS: Going to page -- we -- and we will request documentation of that ever occurring.

BY MR. THOMAS:

Q. Going to page P817, do you remember that Todd Awtry shared the performance reviews of his subordinates with all of his subordinates --

A. Yes.

Q. -- by email?

A. I do remember that.

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. Is that an example of him in his professional, buttoned-up attitude that he was bringing to Absolute?

A. I would say that's not an -- not an example of that.

Q. Did you see that Mary Piehler complained about him doing that?

A. Did she -- sorry, in this thread, she -- did she complain to me about it, sorry?

Q. P817.

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D. Berardo

A. 17. So, sorry, because there's -- it -- it doesn't show who this was sent to on my copy.

Q. Okay. If you go to the top of page P811, who is dberardo@absolute.com?

A. So you're asking me who dberardo@absolute.com is?

Q. M'mm-hmm.

A. That's me.

Q. Okay. And do you see in the first line where it says "Daniel"?

A. Yes. No, there was a -- there's a whole bunch of --

Q. Okay. So I'm ask -- so would you go to page 817. Do you see in there where she tells you that -- that these emails were sent out to everybody in her group?

A. Yeah, and I recall -- I recall this.

Q. Okay. And in the paragraph above, she mentions the fact that a manager who was there less than six months, Troy, a male, is able to get a higher performance rating, and his commentary is the same as hers, which is "I have not had a chance to observe the

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1 D. Berardo
2 competency." That's what Todd Awtry said.
3 Did you look into that, as to why a male could
4 -- could -- with less than six months'
5 experience get a higher score on a
6 performance --

7 MR. SULLIVAN: Objection to form.

8 BY MR. THOMAS:

9 Q. -- review than Mary Piehler when Todd
10 Awtry said he didn't have any basis to do the
11 review?

12 MR. SULLIVAN: Objection to form.

13 THE WITNESS: I don't -- I don't
14 recall -- I don't recall looking into
15 specific performance reviews.

16 MR. THOMAS: We would request the
17 production of any documents reflecting any
18 HR review of those issues.

19 BY MR. THOMAS:

20 Q. Now, Mr. Berardo, what -- what --
21 well, let's do this: Let's just go off the
22 record for five minutes here. Thanks.

23 VIDEOGRAPHER: Going off record. The
24 time is 5:04. This is the end of media 1.

25 (PROCEEDINGS RECESSED AT 5:04?P.M.)

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1 D. Berardo
2 (PROCEEDINGS RECONVENED AT 5:13 P.M.)

3 VIDEOGRAPHER: Back on the record.

4 The time is 5:13.

5 BY MR. THOMAS:

6 Q. All right, Mr. Berardo. Thank you
7 for that break there. Would it be fair to say
8 that at Absolute when women complained about
9 how they were being treated, that their
10 complaints just kind of disappeared?

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: It would not be fair to
13 say.

14 BY MR. THOMAS:

15 Q. Kind of ignored?

16 A. No.

17 Q. Well, let's -- let's take a look
18 here, if we could.

19 And if the court reporter could show
20 Mr. Berardo Piehler Exhibit 22. You can read
21 as much of it as you want. I -- why don't --
22 yeah, why don't you go ahead and read the
23 whole thing, and let me know when you're done.
24 I'm not going to be going over the jellybean
25 stuff at the end, but you can read whatever --

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1 D. Berardo
2 as much as -- as much as you would like.

3 A. Okay.

4 Q. All right. I would like to direct
5 your attention to DEFS2550 and the very top
6 email from you.

7 A. M'mm-hmm.

8 Q. You say:

9 Thanks, Mary. I don't recall ever
10 having a conversation about your
11 performance reviews with Todd. In fact, I
12 don't even recall a conversation with you
13 about not receiving your last performance
14 review. Of course, I've had a lot of
15 conversations, so I can't say for certain.
16 My memory has failed me in the past. It's
17 not my practice to discuss private
18 conversations, though, so I apologize if
19 this did happen."

20 Do you see your comment there?

21 A. I do see my comment, yes.

22 Q. And what date was that?

23 A. It looks like it's August 11th, 2014.

24 Q. How long before that had Mary Piehler
25 complained about the evaluations with Todd?

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1 D. Berardo
2 A. The -- him sending out the -- the
3 numbers?

4 Q. If you look at Exhibit 21, I think it
5 will refresh your recollection.

6 A. It was July 6th, 2014.

7 Q. So how -- how -- how long between the
8 two -- between the two emails?

9 A. So July 6th, 2014, and August 6th,
10 2014. Or August 11th. So just over a month.

11 Q. Okay. So, like, a month and five
12 days. You totally forgot about Mary -- Mary
13 Piehler's complaints about how her manager was
14 evaluating her; correct?

15 MR. SULLIVAN: Objection to form.

16 THE WITNESS: I say:

17 In fact, I don't even recall a
18 conversation with you about not receiving
19 your last performance review."

20 BY MR. THOMAS:

21 Q. If you go to Exhibit 21, page P817,
22 Ms. Piehler says, at the second paragraph:

23 However, what I questioned even more
24 was that I still have never had a
25 performance review with Todd? Not to

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D. Berardo
mention, I do find it unprofessional that
he shares these ratings with an email
distribution list."

A. Okay.

Q. So within the space of a month, you
thought that you had forgotten about Mary
Piehler's complaint about how Todd was
treating her in terms of her performance
evaluations. Fair to say?

A. No. I said:

In fact, I don't recall a
conversation with you about receiving your
last performance review."

Q. Oh, but you meant you did remember an
email, but you didn't remember a conversation?

A. I -- I don't recall what I -- I
don't -- I don't recall what I remember or
don't remember back then. I'm just going --

Q. Okay.

A. -- by what's --

Q. Well, let's look --

A. -- in the email.

Q. -- at what you said. Do you consider
it truthful and transparent to say to someone

D. Berardo
"I don't remember a conversation with you"
when -- when you're referring to an email they
sent you complaining about discrimination?

MR. SULLIVAN: Objection to form.

THE WITNESS: So the email that she
sent to me was not complaining about
discrimination, and I said, "I -- I don't
even recall -- I don't recall the
conversation with you." So I think --

BY MR. THOMAS:

Q. So you had forgotten about it within
a month?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, we're talking
about a conversation, so I'm not sure -- I
have to read this email over again to see
if Mary's --

BY MR. THOMAS:

Q. Sure.

A. -- referring --

Q. Read it again.

A. -- referring to a conversation or the
email she sent me.

Q. I don't want us to keep going around

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D. Berardo
and around about this, Mr. Berardo. I think
it's important that we get to the point.

A. Sure. Absolutely.

So, I mean, just reading from the emails,
it -- it might be possible that I didn't
remember this one line from this nine-page
email a month and a half ago.

Q. Well, let's -- let's count the lines
of that. Let's go to P817. It actually
starts on page 816, number 3, "manager
performance reviews." Bold, highlighted. 1,
2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25,
26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36,
37, 38, 39, 40, 41, 42, 43, 44 -- 46, 47, 48,
49, 50. Really, 50 lines in that email;
right? About it?

MR. SULLIVAN: Objection to form. 50
lines -- I'm sorry. 50 lines in the
entire --

MS. LESTRADE: Nine-page email?

MR. SULLIVAN: -- the nine-page
document, Exhibit 21?

MR. THOMAS: In Exhibit 21, yes.

D. Berardo
MR. SULLIVAN: Are you --
MR. THOMAS: [Indiscernible] --
MR. SULLIVAN: -- representing that
Exhibit 21 is 50 lines?

MR. THOMAS: No, I'm representing
that there's 50 lines of discussion
relating to the performance evaluation.

MR. SULLIVAN: Okay. So --

MR. THOMAS: I'm not representing
anything. I'm asking -- if he doesn't
think there's 50 lines there, he can let me
know. But I don't -- he -- he testified
under oath that there was 1.

MR. SULLIVAN: I'm -- I'm just
confused. 50 lines of what? Just so we're
clear on that.

MR. THOMAS: Discussion about his --
the performance evaluation. Three
managers' performance reviews. It deals
with two issues: Not receiving a
performance evaluation --

MS. LESTRADE: Two issues.

MR. THOMAS: -- and two then being
emails sent out to everybody in the

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company.

THE WITNESS: Okay. Well, I was referring to this line:

However, what I questioned even more was that I still never had a performance review with Todd."

BY MR. THOMAS:

Q. Well, let's go back. What about the first line:

I emailed Tina on December 30th to see if there was ever a review done for me by Todd. Her email --"

A. Okay.

Q.-- exchange is below."

A. Okay.

Q."Have you ever seen the review he wrote for me? I attached the PDF. Todd wrote one sentence for each category. 'I only had six months' visibility to observe this competency.'"

I won't keep reading it, but it's fair to say that her complaint didn't -- wasn't 1 line; correct?

A. Okay. It was more than 1 line.

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D. Berardo

Q. And more like 50. In an entire section of the email.

A. I don't know if the -- this email here you're referring to that I wrote talked about not receiving her performance review. So I don't think that all 50 lines --

Q. Well, go read -- go read what you said -- go read your own words from it.

A."In fact, I don't even recall a conversation with you about not receiving your last performance review."

Q. Yeah. Now, is it because you ignored her complaint or you just forgot about it that you didn't remember it a month later?

MR. SULLIVAN: Objection to form.

THE WITNESS: I -- I don't recall. I don't recall why.

BY MR. THOMAS:

Q. Is it because you didn't -- obviously, you weren't investigating it.

MR. SULLIVAN: Objection to form.

THE WITNESS: Investigating that she didn't receive a review?

BY MR. THOMAS:

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D. Berardo

Q. That she didn't receive a performance review and that her manager emailed out the reviews to other people.

MR. SULLIVAN: Objection to form.

THE WITNESS: So those are two separate issues.

BY MR. THOMAS:

Q. As well as her comment that all she wanted to do was be treated fairly.

MR. SULLIVAN: Objection to form.

THE WITNESS: If -- if you want to go through -- I'm happy to go through each issue one by one, but they're separate issues.

BY MR. THOMAS:

Q. Well, I'm just wondering if you had any -- you had obviously forgotten about the performance review issue -- well, strike that.

Had you forgotten about the performance review about a month later, or did you just ignore it when it first came in?

MR. SULLIVAN: Objection to form.

THE WITNESS: I have already answered that question, but I don't recall.

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D. Berardo

BY MR. THOMAS:

Q. Okay. It's possible you could have ignored it; it's possible you just forgot it?

MR. SULLIVAN: Objection to form.

THE WITNESS: That's your opinion.

BY MR. THOMAS:

Q. No, I'm asking you for your -- for what you mean by "I don't -- it -- it could be." What --

MR. SULLIVAN: Objection --

BY MR. THOMAS:

Q. -- [indiscernible] --

MR. SULLIVAN: -- to form.

THE WITNESS: I didn't say it could be. I said I don't --

BY MR. THOMAS:

Q. Okay. Well, what -- did -- did you forget it?

A. No, I said I don't recall.

Q. Or did you just never read it to begin with?

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't recall. I don't have a recollection of it.

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1 D. Berardo
 2 BY MR. THOMAS:
 3 Q. Okay. It could be either of those?
 4 MR. SULLIVAN: Objection to form.
 5 THE WITNESS: I don't have a
 6 recollection of it, so I can't answer that
 7 question.
 8 BY MR. THOMAS:
 9 Q. Okay. Well, I'm asking you could it
 10 be anything else besides those two, that you
 11 never read it, or you forgot about it?
 12 MR. SULLIVAN: Objection to form.
 13 THE WITNESS: I mean, yeah, I could
 14 have forgotten about it. I -- I mean, I --
 15 I doubt that I wouldn't have read it. But
 16 I may have forgotten that I had -- didn't
 17 read these two sentences in this nine-page
 18 email.
 19 BY MR. THOMAS:
 20 Q. Okay. And you -- do you understand
 21 why -- well, let's -- let's go to Mary
 22 Piehler's comment on Exhibit 22 where she
 23 says, in the email to you at the end of the
 24 second paragraph (as read):
 25 What I want to stop is Todd being

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1 D. Berardo
 2 asked about something, denying it, and then
 3 someone thinking I did not tell the truth
 4 when, in -- when, in reality, it is true
 5 and documented. I would not tell HR or an
 6 ELT member anything I could not
 7 substantiate."
 8 Do you see that?
 9 A. I see that, yes.
 10 Q. Do you think Mary Piehler could have
 11 felt that when she was communicating with you
 12 it just ended up that your -- her complaints
 13 to you were ignored, and that it just went
 14 around and around, and you would forget
 15 things, and you wouldn't pay attention to what
 16 was going on, and she just -- it was very
 17 difficult communicating with you?
 18 A. Absolutely --
 19 MR. SULLIVAN: Objection to form.
 20 THE WITNESS: Absolutely not. We
 21 talked on a number of occasions.
 22 BY MR. THOMAS:
 23 Q. Okay. But, well, she raises a major
 24 concern with you about how her male superior
 25 is conducting her performance appraisals, the

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 2 same one who has just tried to put her on a
 3 PIP, fire her, and forwarded you an email
 4 about [lost connection] somebody thinks
 5 warrants termination, and you can't even
 6 remember what she said to you a month ago in
 7 an email?
 8 MR. SULLIVAN: Objection to form.
 9 BY MR. THOMAS:
 10 Q. Wouldn't that be a concern if you
 11 were an employee?
 12 MR. SULLIVAN: Objection to form.
 13 THE WITNESS: No, we're human.
 14 BY MR. THOMAS:
 15 Q. Well, you say -- let's go to
 16 Exhibit 17. Your email on July 1st on page
 17 DEFS02585 says:
 18 Coming from an HR background, it's
 19 always been drilled in my head to get
 20 everything in writing."
 21 A. Where are we? Sorry, where are we?
 22 Q. Exhibit 17, DEFS02585.
 23 A. 585. Okay.
 24 Q. And you see you said to Mary Piehler:
 25 Coming from an HR background, it has

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 2 always been drilled in my head to get
 3 everything in writing."
 4 Do you see that?
 5 A. Yes.
 6 Q. And Mary Piehler put it in writing,
 7 and it was forgotten or ignored --
 8 A. Mary --
 9 Q. -- by HR?
 10 MR. SULLIVAN: Objection to form.
 11 THE WITNESS: That she didn't --
 12 BY MR. THOMAS:
 13 Q. Right?
 14 A. That she didn't receive a performance
 15 review? I can't --
 16 Q. Her complaint was ignored or
 17 forgotten; right?
 18 MR. SULLIVAN: Objection to form.
 19 BY MR. THOMAS:
 20 Q. Even though she put it in writing?
 21 A. I can't say what happened after that
 22 email or if I had conversations with her. We
 23 had many conversations on the phone.
 24 Q. And what good did it do her to put it
 25 in writing to HR?

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2 MR. SULLIVAN: Objection to form.

3 THE WITNESS: Are you asking me what
4 she thought?

5 BY MR. THOMAS:

6 Q. Yeah. What good did it do? It was
7 forgotten in a month.

8 MR. SULLIVAN: Objection to form.

9 BY MR. THOMAS:

10 Q. Or ignored.

11 A. Okay.

12 Q. What good did it do for her to put it
13 in writing?

14 MR. SULLIVAN: Objection to form.

15 THE WITNESS: I -- I don't know -- I
16 don't know how to answer that question.

17 BY MR. THOMAS:

18 Q. No. All right. Let's move on.

19 What investigations did you do in HR
20 to ensure that Mary Piehler was being treated
21 fairly by the company?22 A. Are you talking about a specific
23 incident?

24 Q. Anything you have done.

25 A. We have gone through --

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1 D. Berardo

2 Q. Anything where you list it.

3 A. We have gone through a number of
4 scenarios.5 Q. You didn't lift -- tell me one right
6 now where you lifted a finger to help Mary
7 Piehler from being treated unfairly at
8 Absolute.

9 A. We did the --

10 MR. SULLIVAN: Objection to form.

11 THE WITNESS: We did a DOE -- DOE
12 investigation.

13 BY MR. THOMAS:

14 Q. That was protecting her?

15 A. It absolutely was, yes.

16 Q. Or was she the one -- she -- wasn't
17 she the target of the investigation?18 A. She was a subject -- she was one of
19 the three subjects of the investigation, from
20 what I recall.21 Q. So being a subject of an
22 investigation is an example of you ensuring
23 that she was treated fairly?

24 A. Absolutely, it is.

25 Q. And her being withheld commissions

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1 D. Berardo

2 during that investigation is an example of her
3 being treated fairly?

4 MR. SULLIVAN: Objection to form.

5 THE WITNESS: That's -- that wasn't
6 my call, so I can't really answer that
7 question.

8 BY MR. THOMAS:

9 Q. As an HR, though -- as an HR -- as
10 head of HR, withholding someone's pay during
11 an investigation, you think, is a way to
12 ensure they're being treated fairly?13 A. We -- we didn't withhold pay; we
14 withheld commissions while the investigation
15 was underway, so --16 Q. What's the difference between --
17 sorry. Go ahead.18 A. So I would think that that would be
19 a -- that would be fair to do in this -- in
20 that sort of circumstance.21 Q. What is the difference between pay
22 and commissions?23 A. Pay can be defined as base pay --
24 commissions, base pay, bonus. There's lots of
25 variable different types of pay.

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2 Q. Any other -- any other examples of
3 you in HR doing anything to protect Mary
4 Piehler from being treated unfairly besides
5 targeting her for an investigation?

6 A. Well --

7 MR. SULLIVAN: Objection to form.

8 THE WITNESS: -- Mary and I spoke a
9 number of different times in a number of
10 different emails, and if she would have
11 raised anything that may have been
12 discriminatory, of course we would have
13 investigated it even further.

14 BY MR. THOMAS:

15 Q. So you -- did you investigate
16 anything ever?17 A. Not from a discriminatory point of
18 view.

19 Q. Okay.

20 A. I would say --

21 Q. Despite all the conversations with
22 Mary Piehler, the emails we have seen, you
23 never once investigated discrimination?

24 MR. SULLIVAN: Objection to form.

25 THE WITNESS: That's correct. That

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1 D. Berardo
2 was never raised. Or -- and that was never
3 apparent in any of the -- any of the
4 documents or any of the complaints that
5 were ever forwarded.

6 BY MR. THOMAS:

7 Q. Anything else that you did to protect
8 her from being treated unfairly?

9 MR. SULLIVAN: Objection to form.

10 THE WITNESS: Not that I recall.

11 BY MR. THOMAS:

12 Q. Before an employee is terminated for
13 poor performance, what steps should an
14 employer go through with that employee --

15 MR. SULLIVAN: Objection to form.

16 BY MR. THOMAS:

17 Q. -- from a human resources
18 perspective?

19 A. I can speak in general.

20 Q. Well, let's -- okay. Go ahead.

21 A. Sure. So it -- it's -- it would
22 depend -- so if it's for performance, it would
23 depend if -- if the person can actually make a
24 turnaround. If the person can make a
25 turnaround, they generally will have a verbal

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2 warning, sometimes a written warning, a
3 performance improvement plan. Sometimes those
4 steps are skipped, depending on the
5 circumstances.

6 If the person has -- if the manager feels
7 that there's no hope in the person
8 improving -- improving, we can move forward
9 directly with terminations -- termination, at
10 times. It's all going to be circumstantial,
11 depending on the circumstances.

12 Q. Let me show you Exhibit 57, if the
13 court reporter can show that to you. If you
14 could turn to DEFS268.

15 MS. LESTRADE: I think you should
16 read the whole document.

17 THE WITNESS: Yeah, can I read the
18 whole document? Just because I'm --

19 BY MR. THOMAS:

20 Q. Yeah, sure.

21 A. Thank you.

22 Q. Have you -- let me ask you this:
23 Have you seen the document before?

24 A. I -- we did -- I did see this when we
25 were preparing.

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1 D. Berardo
2 Q. If you need to read it again, feel
3 free.

4 A. Thank you. Okay.

5 Q. Do you see 2.3.2 on page DEFS268?

6 A. Yeah.

7 Q. And were those -- was that the policy
8 that was in effect at Absolute when
9 Ms. Piehler was terminated?

10 A. I can't say for certain if this is
11 the policy that was in effect. It changed
12 from time to time.

13 MR. THOMAS: We would request the
14 updated copy.

15 BY MR. THOMAS:

16 Q. I will represent to you, though,
17 Mr. Berardo, that this is the copy that was
18 produced to --

19 A. Sure.

20 Q. -- us by Absolute.

21 A. Okay. So just under the assumption,
22 this would be the policy -- if this was the
23 policy that was in force when she was
24 terminated. Okay.

25 Q. And does it mention anywhere about

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1 D. Berardo
2 the fact that steps can be skipped if a
3 manager wants to skip them?

4 A. Well, from -- from reading it, so
5 this policy is only for -- is only for
6 enforcement of policy and other rules. So
7 this is not necessarily performance-related.
8 So it's not something we would follow for a --
9 like, a performance-related conversation. And
10 it does say, in 2.1:

11 Infringements range from minor to
12 very serious, ultimately extending to
13 criminal acts; and therefore, the actions
14 required by managers and HR may vary in
15 sensitivity."

16 Under 2.3 --

17 Q. So it's your testimony that Mary
18 Piehler was not fired for violating any
19 company policy; correct?

20 A. That's correct, from my recollection.

21 Q. Was there anything that she violated
22 that Absolute expected from -- from her as a
23 policy matter as an employee?

24 A. Not that I recall.

25 Q. Okay. And there's nothing about, in

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1 D. Berardo
 2 2.3.2 about skipping steps because of a
 3 manager; correct?
 4 MR. SULLIVAN: Objection to form.
 5 THE WITNESS: Yeah, sure, under
 6 number 2, "preparation":
 7 Consideration of the disciplinary
 8 measure should consider the following
 9 options."
 10 So I would refer back to the word "consider."
 11 So it doesn't lay out the steps, all four
 12 steps. It just says "consider," so...
 13 BY MR. THOMAS:
 14 Q. In Ms. Piehler's case, were these
 15 steps considered?
 16 A. I wouldn't -- this doesn't apply to
 17 Ms. Piehler's case, so those steps --
 18 Q. My question was -- to you was were
 19 these steps considered in Ms. Piehler's case?
 20 A. No -- no, they weren't, because they
 21 don't apply to her.
 22 Q. Why did they not -- what -- what
 23 steps -- the steps -- what steps did apply to
 24 her in terms of what was expected in terms of
 25 interaction between her and the company?

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 2 MR. SULLIVAN: Objection to form.
 3 THE WITNESS: What -- so, sorry,
 4 which -- can you -- can you repeat the
 5 question? I'm sorry.
 6 BY MR. THOMAS:
 7 Q. Sure. What -- what -- was the
 8 company -- in terms of the reason for
 9 Ms. Piehler's termination, what steps prior to
 10 her termination were supposed to go -- were
 11 supposed to occur before -- before she was --
 12 strike -- strike that.
 13 At Absolute when you were there,
 14 when Ms. Piehler was terminated --
 15 A. Yeah.
 16 Q. -- what steps was Absolute supposed
 17 to go through before terminating her?
 18 MR. SULLIVAN: Objection to form.
 19 THE WITNESS: From my recollection,
 20 we weren't really required to follow any
 21 specific steps.
 22 BY MR. THOMAS:
 23 Q. You didn't look at giving Ms. Piehler
 24 a verbal warning?
 25 A. Not under the circumstances, no.

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 2 Q. A written warning?
 3 A. No.
 4 Q. You didn't consider putting her on a
 5 PIP?
 6 A. Before she was terminated?
 7 Q. Yeah.
 8 A. No.
 9 Q. Yeah, that's right. Because I want
 10 to differentiate that from the one that
 11 Mr. Awtry attempted.
 12 A. Right.
 13 Q. So you just jumped straight from
 14 ground -- from zero to termination without
 15 going through any of those steps?
 16 MR. SULLIVAN: Objection to form.
 17 THE WITNESS: We --
 18 BY MR. THOMAS:
 19 Q. Or even looking at them.
 20 MR. THOMAS: Objection to form.
 21 THE WITNESS: Well, these steps don't
 22 apply to -- in -- in --
 23 BY MR. THOMAS:
 24 Q. I'm not asking you that. I'm asking
 25 you did you think about any of those steps

1 D. Berardo
 2 with Ms. Piehler?
 3 A. Well, no, because they don't apply.
 4 Q. Let me try again. Did you think
 5 about the steps of a verbal warning to
 6 Ms. Piehler?
 7 A. No, because it didn't apply.
 8 Q. Did you apply -- did you think about
 9 any written warning?
 10 A. No, because it didn't apply.
 11 Q. Did you think about giving her a PIP?
 12 A. No, because it didn't apply.
 13 Q. Did you think about suspending her?
 14 A. No, because it didn't apply.
 15 Q. And do you think that's an
 16 appropriate way to treat an employee, is to
 17 terminate them without giving them a verbal
 18 warning?
 19 A. Under the --
 20 MR. SULLIVAN: Objection to form.
 21 THE WITNESS: Under the
 22 circumstances, yes.
 23 BY MR. THOMAS:
 24 Q. Why?
 25 A. Because the -- from my perspective,

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1 D. Berardo
2 the -- the -- between Todd and Mary, their
3 working relationship was -- was a difficult
4 one, and so Todd was not able to work with
5 Mary effectively.

6 Q. Anything else?

7 A. I mean, no.

8 Q. Okay. Let's go to -- let's talk
9 about performance reviews at Absolute. Did
10 Absolute give performance reviews?

11 A. Yes.

12 Q. Was that a function that was carried
13 out through the HR -- in part through the HR
14 department?

15 A. It was administered -- administered
16 through the HR department, yes.

17 Q. What is the purpose of performance
18 reviews?

19 A. To review performance.

20 Q. For? What purpose?

21 A. Well, for -- for feedback, for...

22 Q. Feedback to the -- feedback to the
23 employee; correct?

24 A. Correct. Feedback to the employee
25 for the employee to -- to -- to have some, you

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1 D. Berardo
2 know, opportunity to talk about what sort of
3 personal growth they want to take in their
4 career, and, you know, to -- to highlight
5 things that employees -- the employee would be
6 doing well and things the employee, you know,
7 could improve on.

8 Q. And to give an employee an
9 opportunity to improve on that before being
10 fired; right?

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: I -- I don't know if
13 that's the -- if -- if that's the reason of
14 a performance review.

15 BY MR. THOMAS:

16 Q. You don't -- you don't think one of
17 the purposes of a performance review is to
18 give an employee an opportunity to improve
19 their performance so they won't get fired?

20 A. I mean, I think that would be taking
21 it to the extreme. If the person was being
22 fired -- it -- it's not designed for that. An
23 annual performance --

24 Q. Or -- or to tell an employee where
25 they should improve their performance so the

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1 D. Berardo
2 company won't be in a position where they
3 think they need to fire the employee; right?

4 A. Well, sure, that would be accurate,
5 that -- that a performance review is -- is
6 there to provide that feedback to help the
7 employee with their performance, yes.

8 MR. THOMAS: Okay. If the court
9 reporter can show the witness Kenny
10 Exhibit 34.

11 BY MR. THOMAS:

12 Q. Once you've had a chance to read
13 that, let me know.

14 MS. LESTRADE: What number?

15 MR. SULLIVAN: 34.

16 BY MR. THOMAS:

17 Q. Mr. Berardo, you saw this exhibit on
18 Monday, didn't you?

19 A. I didn't -- not from my recollection,
20 I didn't.

21 Q. Okay.

22 A. Okay. You can go ahead.

23 Q. Okay. First of all, this document
24 says -- at the top right, it says "performed
25 on." What does "performed on" mean at

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1 D. Berardo
2 Absolute in performance reviews in that
3 location? The top right-hand corner of the
4 first page.

5 A. Yeah. I'm -- I'm -- I'm only
6 speculating because I don't recall
7 specifically, but it -- it's likely when the
8 review was -- was submitted. But, again, I
9 would be speculating.

10 Q. Now, is there anything in Exhibit --
11 is Exhibit 34 the last performance evaluation
12 Ms. Piehler ever received?

13 A. I -- I don't know. I don't know the
14 answer to that question.

15 Q. When was Ms. Piehler fired?

16 A. Was it July of twenty -- 2015?

17 Q. So can you -- how -- let me ask you
18 this: How far in advance was this performance
19 review prior to her termination?

20 A. Well, this was for the previous -- or
21 the last six months of 2014, and it was
22 completed on -- in February, so it was --

23 Q. How far was that from when she was
24 terminated?

25 A. It was about five months.

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Q. Okay. Is there anything in Exhibit 34 which is consistent with an employee who is about to be terminated in four months?

A. For --

MR. SULLIVAN: Objection -- objection to form.

THE WITNESS: For performance?

BY MR. THOMAS:

Q. For any reason.

A. Well, for performance, I would say -- I would say there's nothing out -- that stands out here.

Q. That would indicate the employee was about to be terminated?

A. Underperforming, yeah.

Q. Or was there anything in here that highlighted -- let me ask you this: Is there anything in here that indicates that Todd Awtry found Ms. Piehler difficult to work with?

MR. SULLIVAN: Objection to form.

MR. THOMAS: Hey, John.

THE WITNESS: Not that I read.

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BY MR. THOMAS:

Q. Okay. And, in fact, to the contrary, if you go to -- is there anything in here that indicates that she's unsupportive of management decisions?

A. Well, I mean, her responses -- I mean, her responses are -- are -- you know, her -- her responses are -- are -- you know, they -- they tend to be reasons or -- or excuses versus accepting the feedback.

Q. My question to you was is there anything in here -- in here that indicates she was unsupportive of the management decisions?

A. Well, I -- I mean, that kind of implies that you're unsupportive, if you're not taking the feedback.

Q. Where -- where does -- where does she not take the feedback?

A. Well, I can only -- I mean, it's just from -- from writing. I mean, there's nothing explicit here, if that's what you're asking. She doesn't say anything like --

Q. Anything -- what -- I'm asking you what you're referring to.

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A. Okay.

Q. How about this: Why don't we go to DEFS10579. And the question is:

Does she approach the business with a can-do attitude that supports the business initiatives?"

Do you see that?

A. I do, yes.

Q. And what is she rated?

A. She's rated a 3 out of 5.

Q. Which is a -- verbally, a what?

A. I -- I don't recall. I think it --

Q. That means "meets expectations," isn't it?

A. I think that's what it is. I think it's "meet expectations."

Q. Well, can you see it right there?

A. Can -- can I see what?

Q. "Your evaluation result meets expectations?"

A. Oh, yes. Sorry. Yes. "Meets expectations."

Q. Why don't -- and why don't you read

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aloud the reviewer comment on this.

A. Reviewer comments?

You are absolutely --"

Q. Yeah.

A. "You are absolutely a roll-your-shelves-up kind of person. Would ask to look at challenges inside ABT as 'how do we get it done?' versus 'it's broken.' While I agree much is broken, the exception is leadership will figure out a way."

Q. Okay. What about -- how about "ensuring the team is deriving a strong relationship with all OEMs and their patch," Exhibit 10577?

A. Okay.

Q. What was she rated there?

A. She was rated 4 out of 5 or "exceeds expectations."

Q. And that's "exceeds expectations," you said?

A. Correct.

Q. I won't keep going through it.

A. Okay.

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Q. But let me also take a look at Exhibit 59. I'm sorry. Wait. Awtry Exhibit 58.

If you could, Court Reporter, just show that to the...

THE WITNESS: Thanks.

BY MR. THOMAS:

Q. Let me know when you have had a chance to read Exhibit 58.

A. Okay.

Q. Now, the issues that Mr. Awtry is raising regarding Mr. Young are also not related to policy, are they?

A. No, they're -- it -- it appears that they're performance.

Q. And what does he do -- first of all, is Mr. Young a male or a female?

A. He's a male.

Q. What does Mr. Awtry do in terms of his male subordinates when there's an issue about their performance?

A. Are --

MR. SULLIVAN: Objection to form.

THE WITNESS: Are you asking me what

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he did with Warren Young?

BY MR. THOMAS:

Q. Yeah. Does he provide a written warning?

A. It appears that he provided a written warning, yes.

Q. Did he do that for Ms. Piehler?

A. Sorry?

Q. Did he do that for Ms. Piehler?

A. Around her performance?

Q. Yeah.

A. Her termination wasn't based on performance.

Q. What was it based on?

A. I have already answered that question.

Q. What did you say?

THE WITNESS: Can you repeat what I said.

THE COURT REPORTER: I'll need the words to find it.

THE WITNESS: Oh, the words to --

BY MR. THOMAS:

Q. You need -- you need to say it again.

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A. Okay.

Q. She was fired based on what? Not policy.

A. No.

Q. Not performance. What, then?

A. It -- she was -- she was terminated based on her -- from what I recall, from my recollection, it was her and Todd's difficult -- difficult -- difficult working relationship. Like, they --

Q. Which was not a performance issue by her; correct?

A. Which is not a -- was not a measure of her numbers or her --

Q. It was -- it wasn't also a measure of her complying with policy at Absolute, was it?

A. No, this didn't have anything to do with policy. Not that I recall. I -- I haven't read the entire policy manual.

Q. If you read Exhibit 58 and Exhibit 34, who would you think is more likely to get terminated in the next five months?

MR. SULLIVAN: Objection to form.

THE WITNESS: I -- I under -- I under

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-- based on performance?

BY MR. THOMAS:

Q. No, just who is more likely to get terminated --

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. -- based on your experience in HR and --

A. I -- I would never make that call without knowing more facts based on two emails -- or two documents. I would never make that call.

Q. Based on those two, though, who would be in more trouble?

A. I would never -- I would never make that call.

Q. When a manager says to you "you mentioned to me in one of our previous conversations, not Friday," that:

I know I'm running out of time, and if I continue to miss my quota, you won't have to manage me out of the business, which leads me to believe you understand the urgency to correct performance

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 2 immediately."
 3 Do you see that? In Exhibit 58.
 4 A. Yeah. And what line is that?
 5 Q. The second-to-last.
 6 A. Second-to-last line?
 7 Q. Exhibit 58.
 8 A. Oh, the last page? The first --
 9 Q. First -- first page.
 10 A. Oh, the first page, the last line?
 11 Or the...
 12 Q. Second-to-last line.
 13 A. Oh, right. Okay.
 14 Q. Second-to-last paragraph.
 15 A. Okay.
 16 Q. Do you see that?
 17 A. I do.
 18 Q. Mary Piehler never got a warning like
 19 that, did she?
 20 A. Well, this was -- this was a
 21 performance -- this was a performance issue,
 22 so Mary never got a performance-based warning
 23 because there was no big performance numbers
 24 or quota that --
 25 Q. Let's not go round and round about

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1 D. Berardo
 2 Q. But Mr. Young, the male employee,
 3 was?
 4 A. Based on his performance --
 5 Q. Correct?
 6 A. -- yes. Yeah.
 7 Q. And, in fact, Mr. Young wasn't even
 8 fired; he was kept on with the same pay after
 9 this. Does that surprise you?
 10 A. I don't recall the --
 11 MR. SULLIVAN: Objection --
 12 THE WITNESS: -- circumstances.
 13 MR. SULLIVAN: -- to form.
 14 BY MR. THOMAS:
 15 Q. Okay. Tell me about the open
 16 door-policy at Absolute.
 17 MR. SULLIVAN: Objection to form.
 18 THE WITNESS: I mean, the open-door
 19 policy was that, you know, if -- if anyone
 20 had an issue or a complaint, they could
 21 come to anyone on the leadership team.
 22 BY MR. THOMAS:
 23 Q. And would they be fired for any
 24 issues they raised?
 25 A. Any --

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1 D. Berardo
 2 this, Mr. Berardo.
 3 A. Okay.
 4 Q. Let's just get to the point.
 5 A. Sure.
 6 Q. She was never given a warning like
 7 that; right?
 8 A. She was never given a warning about
 9 her performance, no.
 10 Q. Or given a warning in any sense that
 11 she was about to be terminated?
 12 A. A warning that she was -- a heads-up
 13 that she was going to be terminated? Not that
 14 -- not -- my recollection is that she was not
 15 given a heads-up that she was going to be
 16 terminated.
 17 Q. Or a warning that if she continued to
 18 engage in certain behaviour, she was likely to
 19 be terminated?
 20 A. I -- I can only speak for myself and
 21 my knowledge, and my knowledge --
 22 Q. Do you have any knowledge that she
 23 was given any warning that her employment was
 24 in jeopardy?
 25 A. Not my -- not to my recollection.

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1 D. Berardo
 2 Q. Under the open-door policy?
 3 A. Any issues that they raised?
 4 Q. Yeah.
 5 A. Would they be fired because of it? I
 6 mean --
 7 Q. Yeah.
 8 A. -- I can't -- I can't speculate what
 9 someone would come and -- and tell us. If
 10 they were telling us they were doing something
 11 illegal, yeah, they could get fired.
 12 Q. But in terms of their comments about
 13 how the company could be run better or
 14 differently, that wouldn't -- and -- and they
 15 came forward under the open-door policy, they
 16 weren't going to risk termination for doing
 17 that, were they?
 18 MR. SULLIVAN: Objection to form.
 19 THE WITNESS: I -- I can't say that
 20 they were or weren't. You know, if --
 21 if --
 22 BY MR. THOMAS:
 23 Q. So it's possible someone could -- so
 24 you're saying that under the open-door policy,
 25 someone could come to their manager, express

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1 D. Berardo
2 thoughts about how the company could be run
3 better, and they could be fired for it?

4 MR. THOMAS: Objection to form.
5 BY MR. THOMAS:

6 Q. That was the open-door policy at
7 Absolute?

8 A. I wouldn't say that's the open-door
9 policy, but, I mean, it -- it would depend on
10 circumstances.

11 Q. Did you say that it is the open-door
12 policy, what I --

13 A. No.

14 Q. -- just described?

15 A. I said that wouldn't be the open-door
16 policy --

17 Q. Okay.

18 A. -- but it would depend on
19 circumstances.

20 MR. THOMAS: If you -- if the court
21 reporter could show the witness Exhibit 24.

22 THE WITNESS: Thank you.

23 BY MR. THOMAS:

24 Q. Once you have finished -- once you've
25 had a chance to read it, let me know.

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2 A. Okay. Okay.

3 Q. Now that you have read that, could
4 you -- would you say that that email was
5 degrading to Todd Awtry?

6 MR. SULLIVAN: Objection to form.

7 THE WITNESS: Degrading to Todd
8 Awtry?

9 BY MR. THOMAS:

10 Q. Yeah. What Mary Piehler said, was
11 she being degrading to Todd Awtry?

12 A. It was very contradictory to what
13 Todd was trying to tell her.

14 Q. My question to you was is Mary
15 Piehler being degrading to Todd Awtry in that
16 email?

17 MR. SULLIVAN: Objection to form.

18 THE WITNESS: I mean, that's -- in my
19 opinion?

20 BY MR. THOMAS:

21 Q. As an HR person at Absolute, yes, do
22 you consider this to be degrading treatment
23 from one employee to another?

24 MR. SULLIVAN: Objection to form.

25 THE WITNESS: I don't know if I -- I

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2 wouldn't use the word "degrading."

3 BY MR. THOMAS:

4 Q. Would you use the term "berating"?

5 A. Sorry?

6 Q. Berating, b-e-r-a-t-i-n-g. Berating.
7 Would you say Mary Piehler was berating Todd
8 Awtry in this email?

9 MR. THOMAS: Objection to form.

10 THE WITNESS: Can -- can you -- can
11 you define "berating" to me.

12 BY MR. THOMAS:

13 Q. What does -- what does "berating"
14 mean to you?

15 A. I guess someone that is -- you know,
16 some -- someone that is -- that is not showing
17 respect.

18 Q. You think Mary Piehler is not showing
19 respect to Todd in this email?

20 A. Yeah, I think there's -- there's
21 points where she's not.

22 Q. Do you think Todd is showing respect
23 to Mary in this email?

24 MR. SULLIVAN: Objection to form.

25 THE WITNESS: From reading it, I

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2 mean, it seems like Todd is trying to
3 provide her some of the -- some feedback.

4 BY MR. THOMAS:

5 Q. What do you think of Mary's comments
6 about what Todd was saying to her? Do you
7 think that was appropriate?

8 MR. SULLIVAN: Objection to form.

9 THE WITNESS: Can you point me to --
10 to -- to the paragraph you're speaking of.

11 BY MR. THOMAS:

12 Q. Well, we can just start with in the
13 first italicized thing:

14 Criticizing me and my 'leadership' in
15 front of one of my peers is not really the
16 right thing to do. You even commented that
17 you were going to 'get personal' before you
18 started to criticize me? Obviously, I can
19 sense you're annoyed and frustrated, but I
20 was being honest, and my reps will back up
21 everything that I told you. There is no
22 hidden agenda here. I was clear,
23 transparent, and doing what I still believe
24 was the right thing, telling my manager the
25 concerns of my team. I don't see this as

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2 bad leadership at all."

3 A. Okay. And so, sorry, what was the --
4 what was the original question?

5 Q. Do you think that it was appropriate
6 for Todd Awtry to say to an employee that he's
7 about to get personal with her?

8 MR. SULLIVAN: Objection to form.

9 BY MR. THOMAS:

10 Q. And do so in front of her peers?

11 A. If -- I mean, if that is what he --
12 if that is what he said, to "get personal,"
13 I'm not sure what he meant by that.

14 Q. Is there ways that that would be
15 okay?

16 A. Is there a way to -- that that would
17 be okay?

18 Q. For a manager to speak to a
19 subordinate with a -- in front of a peer?

20 MR. SULLIVAN: Objection to form.

21 THE WITNESS: If that's what he said,
22 if he actually said "I'm going to get
23 personal," I probably would coach him to --
24 I would ask what is he trying to say and
25 coach him to use other language besides

1 D. Berardo

2 "get personal."

3 BY MR. THOMAS:

4 Q. Anything in those three paragraphs
5 where Mary is berating or showing lack of
6 respect to Todd?

7 A. Well, just the overall email. Not
8 really -- just from my point of view, not --
9 not really taking any of the feedback or
10 taking any ownership.

11 Q. Why don't we do this: Show me one
12 sentence or one paragraph where Mary Piehler
13 is showing a lack of respect to Todd.

14 MR. SULLIVAN: Objection to form.

15 THE WITNESS: I -- there's -- there's
16 no -- no one sentence. I -- my point was
17 that Todd was providing her feedback, and
18 the email was all about her, you know,
19 providing contrary opinions to Todd.

20 BY MR. THOMAS:

21 Q. And on the open-door policy, she was
22 free to provide contrary opinions to Todd;
23 correct?

24 MR. SULLIVAN: Objection to form.

25 THE WITNESS: I don't have the

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2 open-door policy in front of me, so if -- I
3 don't know if we have that as an exhibit.

4 BY MR. THOMAS:

5 Q. Do you have any reason to believe
6 that's not true?

7 MR. SULLIVAN: Objection to form.

8 THE WITNESS: I mean, someone has --
9 someone has a right to say whatever they
10 want.

11 BY MR. THOMAS:

12 Q. Under the open-door policy, that's
13 what's allowed; right?

14 A. Well, I think any human has a right
15 to say -- you can say anything to anyone, if
16 you really want to.

17 Q. I'm talking about the open-door
18 policy in HR. Was it okay for some -- for a
19 subordinate to say something to a manager
20 about how -- how they thought the company
21 could do better?

22 A. I -- I would need to see the actual
23 open-door policy.

24 Q. Any reason you think that Mary
25 Piehler violated that policy, based on what

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2 you know right now, from Exhibit 24?

3 A. If you can show me the policy, I can
4 answer that question.

5 Q. No, I'm saying -- I'm asking you
6 based on your knowledge.

7 A. Based on my knowledge of the
8 open-door policy, I mean, my vague knowledge
9 of what the open-door policy was I don't think
10 got into specifics of what you can and can't
11 do. So I can't answer that question.

12 Q. Do you think Exhibit 24 warranted an
13 employee's termination? And, specifically,
14 Mary Piehler's?

15 MR. SULLIVAN: Objection to form.

16 THE WITNESS: If we're -- if -- are
17 we talking about a single document? If --
18 if I was presented --

19 BY MR. THOMAS:

20 Q. Yes.

21 A. -- a single document?

22 Q. Yes.

23 A. You know, it -- it would essentially
24 be up to the manager, and we would have that
25 conversation. It's hard for me to answer

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2 that, because it's -- it's not just a single
3 email.

4 Q. Well, what did -- what emails did you
5 look at in -- did -- were you -- let me ask
6 you this: Were you involved in the decision
7 to terminate Ms. Piehler?

8 A. The decision came from -- the
9 decision came from Todd to terminate --

10 Q. Did you --

11 A. -- Mary.

12 Q. Did you do anything besides observe
13 and report it?

14 A. I --

15 MR. SULLIVAN: Objection to form.

16 THE WITNESS: I had conversations --
17 we definitely had conversations with Todd.
18 BY MR. THOMAS:

19 Q. When did you have those
20 conversations?

21 A. Before -- I mean, before the decision
22 was made.

23 Q. Did you question whether
24 discrimination might be an issue?

25 A. No, because I've never observed any

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2 sort of discrimination.

3 Q. Did you investigate -- did you talk
4 to Todd about Mary Piehler's complaints
5 about -- that she had made to you about him?
6 Did you investigate those?

7 MR. SULLIVAN: Objection to form.

8 THE WITNESS: I don't -- I don't have
9 recollection of that.

10 BY MR. THOMAS:

11 Q. Would there ever be a reason for a
12 manager not to tell HR that they were looking
13 to replace an employee?

14 MR. SULLIVAN: Objection to form.

15 THE WITNESS: Sorry, would there ever
16 be a reason why a manager wouldn't tell HR
17 that they were looking to replace an
18 employee?

19 BY MR. THOMAS:

20 Q. Yeah.

21 A. Well, if they're looking to replace
22 the HR person, that would be a reason.

23 Q. Other than that?

24 A. There may be other reasons. I -- I
25 mean, I can't think of the thousands and

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2 thousands of reasons off the top of my head.
3 Not off the top of my head right now.

4 Q. What about not telling Recruiting
5 that they're looking to replace a manager?

6 MR. SULLIVAN: Objection to form.

7 THE WITNESS: Not telling --
8 BY MR. THOMAS:

9 Q. Any reason -- any reason -- any
10 reason that a supervisor should keep
11 Recruiting in the dark about it?

12 A. It's -- it's possible if they want to
13 keep something confidential, that they -- they
14 keep it to a limited amount of people before
15 they replace someone.

16 Q. I'm talking about Recruiting.

17 A. So you're -- you're asking if --
18 sorry, can you repeat the question, then.

19 Q. Yes. Should a -- if a supervisor is
20 looking to replace a manager --

21 A. Yeah.

22 Q. -- should that supervisor keep
23 Recruiting in the dark when they're out
24 advertising for the job?

25 MR. SULLIVAN: Objection to form.

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2 THE WITNESS: That happens, yes.
3 BY MR. THOMAS:

4 Q. Should it --

5 MR. SULLIVAN: Objection to form.
6 BY MR. THOMAS:

7 Q. -- from an HR perspective? When?

8 A. In circumstances. Just when it's a
9 sensitive termination.

10 Q. Why shouldn't Recruiting be told?

11 A. Because you want to keep -- you want
12 to keep sensitive information as tight as
13 possible and not tell -- only tell people that
14 it -- that's -- that would be absolutely
15 necessary to know.

16 Q. Where did you first learn that Mary
17 Piehler was going to be -- was under
18 consideration for termination?

19 A. I don't recall the specific date.
20 It -- it was -- it could have been a month,
21 month and a half, couple of months before she
22 was actually terminated. I -- but my -- I
23 don't -- I don't know the specific dates, so I
24 wouldn't hold to that -- that date.

25 Q. What is a position number at

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Absolute?

A. A position number is something that was controlled by finance. And so every position had a number, and then an employee was assigned to that number. And so an employee could leave, and their employee number could leave with them, but the position number would stay with that position. So the -- there could be multiple employees in that same position number over the course of the years.

Q. Did each employee have a separate position number?

A. They should have, yes. At -- at -- we -- I should say that we implemented position numbers at a certain point. They weren't always at Absolute, and I don't know when they were actually -- they were actually implemented.

Q. But once you had a position number -- once you had implemented position numbers, only one employee had a position number; correct? Or each employee had a unique position number; right?

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A. I mean, generally, this was, again, managed by finance, so I'm -- I'm not the expert when it comes to position numbers. So it would probably be someone in finance that would be able to answer that definite -- more definitively.

Q. When somebody left and a new person took their role, they would be given the same position number?

A. When someone left and a new --

Q. As the person -- as the person who left?

A. It -- it's a possibility. Or -- so, usually, that -- yeah, usually, the position number would stay around, unless the position was eliminated. And someone would -- would take that position number, in general, I think.

Q. What if the position was changed? Would a new position number be created?

A. I don't know the answer to that. I'm not sure. It's a finance question.

MR. THOMAS: If you could show, Jessica, the witness Exhibit 81.

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THE WITNESS: Thanks.

BY MR. THOMAS:

Q. And, Mr. Berardo, I would like you to read that exhibit and let me know when you're done.

Jessica, just to save some time, from the new exhibits, Berardo new exhibits, if you could pull O, P, I, J, and N. And you can mark those. Those will be coming for the witness next.

MS. LESTRADE: Did we lose her?

MR. MANINDER: That might have been Mary falling off.

MR. THOMAS: Mary, are you still there?

MS. LESTRADE: I think she may have fallen off.

MR. THOMAS: Oh, okay. Want to just loop her back in there? Or did she -- did she call in?

MS. LESTRADE: No, we can call her, but -- yeah, hold on.

MR. THOMAS: Okay.

MS. LESTRADE: I will try to get her

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back.

THE COURT REPORTER: Let's go off the record.

MS. LESTRADE: Okay.

THE WITNESS: Can we take a two-minute break, then.

MS. LESTRADE: Sure, yeah.

VIDEOGRAPHER: Going off record. The time is 6:18.

(PROCEEDINGS RECESSED AT 6:18 P.M.)

(PROCEEDINGS RECONVENED AT 6:27 P.M.)

VIDEOGRAPHER: Back on the record.

The time is 6:27.

BY MR. THOMAS:

Q. All right. Mr. Berardo, does Exhibit 81 accurately describe the termination meeting with Ms. Piehler?

A. Yeah, from my recollection, it does.

Q. Did you consider the exit interview to be bizarre?

A. The -- the request for the -- the exit interview?

Q. No, sorry, the termination meeting.

Did you consider the termination meeting to be

76 (Pages 298 to 301)

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bizarre?

A. No.

Q. Did you consider Mary's reaction at the termination meeting to be bizarre?

A. No.

Q. Why was a third party present for the meeting?

A. Because I couldn't be there in person, and so it's a best practice to have another person in the room.

Q. Was it appropriate for Ms. Piehler's severance, financial, and benefits to be discussed with a third party?

MR. SULLIVAN: Objection to form.

THE WITNESS: It's -- it's -- it's common -- it's common -- if someone is witnessing a termination, it's common practice for them to be in the room during that termination meeting. The full termination meeting.

BY MR. THOMAS:

Q. Without going around and around, is that a yes or a no?

A. Can you repeat the question.

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MR. THOMAS: Yes. Can the court reporter read it back.

(REPORTER READ BACK)

THE WITNESS: Yes, it was appropriate for that to be discussed while that third party was in the room.

BY MR. THOMAS:

Q. Why was Tom Ioele hiding and not present?

A. I don't -- I don't know. I don't know that he was even hiding.

Q. Why wasn't he -- why wasn't he present in the room?

A. Well, we had the -- that representative in the room, Catherine.

Q. And let's go through here. Where was -- where was Tom in relation to the meeting?

A. I -- I don't know. I don't have any recollection of Tom.

Q. Well, he's listed as being present in the room. Do you see that?

A. Yes.

Q. How come Mary Piehler couldn't see him?

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A. I mean, he must -- he must have been present. Because at -- the bottom sentence says:

Tom indicated he would follow up with Mary, since he knows her personally." Maybe --

Q. Why -- why wasn't he -- where was -- was he hiding somewhere in the room?

A. Perhaps he was on the phone. I -- I don't -- I don't recall.

Q. Well, you said he had to be present in the room.

A. Sorry, present? I -- I was not present in the room, and it marks me as present. So he could have been on the phone. I -- I don't know.

Q. But you're marked -- you're marked as being on the phone.

A. Okay. I don't -- I don't know.

Q. Is there any good explanation as to why someone would hide in the middle of a termination meeting?

MR. SULLIVAN: Objection to form.

THE WITNESS: Why someone would hide

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in a termination meeting? Is this a hypothetical question?

BY MR. THOMAS:

Q. Well, Tom Ioele was present for the termination meeting but was hiding somewhere where he couldn't be seen by Ms. Piehler. Is there any good reason for that?

A. I don't think that's --

MR. SULLIVAN: Objection to form.

THE WITNESS: I don't think that's an accurate statement.

BY MR. THOMAS:

Q. Which part of it is not accurate?

A. That he was hiding in the room.

Q. Well, why couldn't he -- okay. If -- if you're in a conference room in a hotel and three people are present -- four, including Ms. Piehler -- why couldn't Mr. Ioele be seen?

MR. SULLIVAN: Objection to form.

THE WITNESS: I mean, I think that's a question for Catherine and Tom. I -- I wasn't in the room, so --

BY MR. THOMAS:

Q. Not you as head of HR?

77 (Pages 302 to 305)

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A. I wasn't in the room, so I didn't observe who was in -- who was actually in the room, unfortunately.

Q. It wouldn't be appropriate for him to -- for someone to not make themselves known and hide in a room during a termination meeting, would it?

MR. SULLIVAN: Objection to form.

THE WITNESS: If -- if you're speaking in a general sense, yes, it would not be appropriate for someone to hide in a room during a termination --

BY MR. THOMAS:

Q. What about in --

A. -- meeting.

Q. -- in Mary Piehler's case? Would it be appropriate there?

A. If he was hiding?

Q. Or not visible.

A. If he was hiding and he didn't make himself present to Mary?

Q. Correct.

A. I imagine that would be inappropriate, yes.

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Q. Did you know that Ms. Piehler's husband had cancer?

A. I'm -- I'm not sure if I knew before the termination. I definitely knew after the termination when speaking with Mary.

Q. And didn't Absolute promise that they were going to continue Ms. Piehler's health benefits?

A. I don't recall Absolute making that -- that promise. Generally, in the -- in the -- in the severance, it's part of a severance to -- I just don't -- I can't speak to it. I don't -- I don't have the termination letter in front of me. I don't know what was offered or what wasn't.

Q. Did you talk to Ms. Piehler about her medical coverage? Because you cancelled it on them and Mr. Piehler when he was going in for cancer surgery?

A. I'm -- we may have spoken. Mary and I spoke quite a bit on the phone after the termination. I don't --

Q. Did it include the fact that you had cancelled the health insurance on her husband

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who had cancer, despite promising not to do so?

A. So --

MR. SULLIVAN: Objection to form.

THE WITNESS: Yeah, the way the insurance works in the US is -- is insurance is not cancelled. Someone can go on COBRA and can continue that coverage once -- once the payment has stopped from the company.

BY MR. THOMAS:

Q. My question to you is didn't you cancel Ms. Piehler's insurance immediately upon her exit meeting, even though you had told her it was not being cancelled?

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. And the only way she found out was when her husband went in for cancer treatment, and there was no medical coverage?

A. No, I wouldn't say that's accurate. We would have went through this with her in the termination letter, and it would have been laid out in the termination letter.

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Q. You're not saying -- so you're denying that you all cancelled the insurance on Mary Piehler and her husband who had cancer?

A. I -- I'm not denying the fact that the company stopped paying for coverage and she was referred to COBRA. What I'm saying is that -- is that that was all laid out in the -- in the -- in the severance package, and that would have been -- gone -- we would have gone over that during that termination meeting.

Q. Now, how much -- how do you determine how much severance an employee is to receive when they are terminated?

A. Typically, it's a -- it's a question that -- that we have with our legal counsel, and so it -- it will depend on -- on the circumstance, and then that -- that will be discussed with the legal counsel to come up with a recommendation, depending on the circumstances. And location.

Q. Do you ever offer severance to an employee who resigns voluntarily?

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2 A. Resigns voluntarily? It can happen.

3 Q. Do you know why Amy Rathbun was
4 offered such a large severance package, even
5 though she resigned voluntarily?6 A. I wasn't around for Amy's
7 resignation. I don't know the details.8 Q. What would be the circumstances under
9 which a person would be offered a large
10 severance package when they left voluntarily?

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: So you're -- you're --
13 you're just asking me in general
14 hypothetically?

15 BY MR. THOMAS:

16 Q. No, at HR -- at Absolute when you
17 were in HR.

18 MR. SULLIVAN: Objection to form.

19 THE WITNESS: I don't recall -- I
20 don't recall us offering a severance
21 package to someone that resigned
22 voluntarily. My recollection -- I don't
23 recall that.

24 BY MR. THOMAS:

25 Q. All right. Let me show you

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2 Exhibits -- what has been marked as
3 Exhibits 87 through 91. Let me know when you
4 have had a chance to read those.5 (Exhibit 87 was marked for
6 identification and is attached hereto.)7 (Exhibit 88 was marked for
8 identification and is attached hereto.)9 (Exhibit 89 was marked for
10 identification and is attached hereto.)11 (Exhibit 90 was marked for
12 identification and is attached hereto.)13 (Exhibit 91 was marked for
14 identification and is attached hereto.)15 MR. THOMAS: And, Jessica, if you can
16 mark Berardo Exhibit A as 92.17 (Exhibit 92 was marked for
18 identification and is attached hereto.)19 MR. THOMAS: And, Jessica, one more
20 exhibit. Berardo Exhibit X as 93.21 (Exhibit 93 was marked for
22 identification and is attached hereto.)

23 THE WITNESS: Okay.

24 BY MR. THOMAS:

25 Q. All right. These -- these documents,

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2 some of which are redacted, involve
3 discussions with legal and other people
4 regarding Ms. Piehler's termination.5 Do you -- how far in advance of
6 consulting legal do you remember discussing
7 Ms. Piehler's termination?

8 A. With Todd?

9 Q. With anyone.

10 A. I don't -- I don't recall
11 specifically the -- the timeline of -- of who
12 I talked to about, you know, her termination
13 before we spoke with legal.14 Q. How -- how long -- how soon after the
15 idea of her being terminated did you contact
16 legal?17 A. It -- it -- I don't -- I don't know
18 the answer to that. It -- it would have been
19 fairly quickly, I would imagine.20 Q. And "fairly quickly" meaning a week
21 or two?22 A. I don't -- I don't know. I -- I
23 don't have specific times.24 Q. Well, you used the words "fairly
25 quickly," so I'm asking what you mean by --

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2 A. Yeah.

3 Q. -- "fairly quickly."

4 A. It could be -- it could be a day; it
5 could be a couple of weeks.

6 Q. Okay.

7 A. I don't know.

8 Q. Do you wish you had known about
9 Thomas Kenny's comment when you made -- when
10 the termination decision was made?

11 MR. SULLIVAN: Objection to form.

12 THE WITNESS: Do I -- do I wish?

13 BY MR. THOMAS:

14 Q. Would you like -- let me put it this
15 way: Would you like to have known about it?

16 MR. SULLIVAN: Objection to form.

17 THE WITNESS: Well, as I said before,
18 I would have liked to have known about it
19 when -- when it happened, yes.

20 BY MR. THOMAS:

21 Q. Would you have liked to have known
22 about it in terms of how you would have
23 approached the termination decision?

24 A. No.

25 MR. SULLIVAN: Objection to form.

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 2 THE WITNESS: No.
 3 BY MR. THOMAS:
 4 Q. What could you have done better in
 5 dealing with Mary Piehler at Absolute, from an
 6 HR perspective?
 7 MR. SULLIVAN: Objection to form.
 8 THE WITNESS: You know, I believe --
 9 oh.
 10 MR. SULLIVAN: Keep going.
 11 MS. LESTRADE: Just keep going.
 12 THE WITNESS: Okay. Yeah, I believe
 13 that -- that -- that I did everything that
 14 I felt was appropriate at the time in -- in
 15 -- in dealing with Mary.
 16 Oh, he -- he can't hear us either.
 17 MR. SULLIVAN: Is Mary still on?
 18 THE COURT REPORTER: Okay.
 19 VIDEOGRAPHER: Should we --
 20 MS. LESTRADE: Hello?
 21 VIDEOGRAPHER: -- go off record,
 22 counsel? Should we go off?
 23 MR. SULLIVAN: It's his -- it's his
 24 deposition --
 25 MS. LESTRADE: It's his deposition.

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 2 MR. SULLIVAN: -- but I guess he
 3 can't hear us, so...
 4 MS. LESTRADE: I don't think we -- I
 5 don't think we --
 6 MS. VAN BRUNT-PIEHLER: Yes.
 7 MS. LESTRADE: -- need to.
 8 MS. VAN BRUNT-PIEHLER: I'm still on.
 9 MR. SULLIVAN: Okay.
 10 MS. LESTRADE: Oh.
 11 MR. SULLIVAN: We lost Nelson. We'll
 12 patch him back in.
 13 MS. VAN BRUNT-PIEHLER: Okay.
 14 MR. SULLIVAN: He -- he's got to call
 15 us, because it's just going to go to his...
 16 MR. MALLI: Unless he gives us the
 17 number again.
 18 MS. LESTRADE: Let's see. Maybe they
 19 will fix it and get their act together on
 20 their end.
 21 MR. SULLIVAN: He's got to call us.
 22 MS. LESTRADE: Ms. Piehler, are you
 23 still on the line?
 24 MR. SULLIVAN: Hit the resume.
 25 Resume.

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 2 MS. LESTRADE: Resume?
 3 MR. SULLIVAN: Yeah. Okay.
 4 MS. LESTRADE: Hello? Is there
 5 anyone on the line?
 6 MS. VAN BRUNT-PIEHLER: Mary is on.
 7 MS. LESTRADE: Okay.
 8 MR. SULLIVAN: Okay.
 9 MS. LESTRADE: We're going to have to
 10 end the call with you because their --
 11 MS. VAN BRUNT-PIEHLER: Okay.
 12 MS. LESTRADE: -- phone isn't
 13 working.
 14 MR. SULLIVAN: We'll -- we'll connect
 15 back in when they call here, so --
 16 MS. VAN BRUNT-PIEHLER: Okay. No
 17 problem.
 18 MR. SULLIVAN: -- stand -- stand by.
 19 MS. LESTRADE: Okay.
 20 MR. MALLI: Do you want me to hang
 21 up?
 22 MR. SULLIVAN: Yeah.
 23 MS. LESTRADE: Yes.
 24 MR. SULLIVAN: Hang up, and we'll
 25 call you back.

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 2 MS. LESTRADE: Okay.
 3 MS. VAN BRUNT-PIEHLER: Okay.
 4 MS. LESTRADE: Bye.
 5 Is he going to call? Does he know to
 6 call, do you think?
 7 MR. SULLIVAN: What does that say?
 8 MS. LESTRADE: "We're going to take
 9 ours off 'night' so you can call."
 10 MR. SULLIVAN: Okay. All right.
 11 MS. LESTRADE: Okay. So --
 12 MR. SULLIVAN: Let's try again.
 13 MS. LESTRADE: -- now?
 14 UNIDENTIFIED SPEAKER: Thank you for
 15 calling Thomas & Solomon. This is Kyle.
 16 How can I help you?
 17 MS. LESTRADE: Hi, we're in the
 18 middle of a deposition with Nelson Thomas.
 19 THE WITNESS: Okay. One moment,
 20 please.
 21 MS. LESTRADE: We need get him on the
 22 line.
 23 MR. THOMAS: Hey. Do we have you
 24 back?
 25 MR. SULLIVAN: Yeah. We'll patch in

80 (Pages 314 to 317)

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1 D. Berardo
2 Mary.
3 MR. THOMAS: Okay. Perfect.
4 Thank you.
5 MS. VAN BRUNT-PIEHLER: Hello, Mary
6 Piehler.
7 MR. SULLIVAN: Hi. Hold on. We're
8 going to get Nelson on.
9 MS. VAN BRUNT-PIEHLER: Okay. Sure.
10 MS. LESTRADE: Everyone on?
11 MR. THOMAS: I'm here.
12 MS. LESTRADE: Ms. Piehler?
13 MS. VAN BRUNT-PIEHLER: I'm here.
14 MS. LESTRADE: Okay.
15 MR. SULLIVAN: Okay.
16 MR. THOMAS: Okay.
17 MS. VAN BRUNT-PIEHLER: I'm here.
18 MR. SULLIVAN: Yeah.
19 MS. LESTRADE: Okay.
20 MR. SULLIVAN: We're good.
21 MR. THOMAS: Great. Can we go back
22 on the -- I don't -- did we go off the
23 record or --
24 MR. SULLIVAN: Yes. Yes. No?
25 THE COURT REPORTER: No.

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1 D. Berardo
2 Q. Well, go through it -- go through it
3 and tell me when it says they're going to end.
4 A. Sure. So it says (as read):
5 Benefits: Your group extended health
6 and dental benefits will cease at the end
7 of the month on the -- July 31st, 2015.
8 You have the election under COBRA
9 legislation to continue your group health,
10 vision care, and dental plan by paying the
11 premiums. You will receive a notification
12 from our COBRA administrative, COBRA help."
13 Q. You may need to read just a little
14 slower for the court reporter there.
15 THE WITNESS: Sorry. Do you...
16 THE COURT REPORTER: That's okay. I
17 got it.
18 THE WITNESS: Okay.
19 To be eligible, you must respond to
20 the notice by August 30th, 2015."
21 And then it goes on about life insurance.
22 BY MR. THOMAS:
23 Q. Isn't it -- isn't it true that cut
24 Mary Piehler's health insurance off before
25 July 31st?

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1 D. Berardo
2 VIDEOGRAPHER: No.
3 MR. SULLIVAN: Okay. We're back on.
4 Well, we're on.
5 MR. THOMAS: All right. And then can
6 the court reporter read back the last
7 question and the answer until it stopped.
8 (REPORTER READ BACK)
9 BY MR. THOMAS:
10 Q. From where you sit today, would you
11 have done anything differently?
12 MR. SULLIVAN: Objection to form.
13 THE WITNESS: I -- I wouldn't, no.
14 MR. THOMAS: All right. And can the
15 court reporter show the witness what has
16 been marked as Exhibit 92.
17 BY MR. THOMAS:
18 Q. Is this the severance package that
19 you said would explain to Ms. Piehler when her
20 medical benefits would end?
21 A. I believe so, yes.
22 Q. And tell me what you told her when
23 they would end.
24 A. Well, I -- I would have went through
25 this -- I mean, I -- I don't remember the --

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1 D. Berardo
2 A. Not -- not that I recall, unless it
3 was an administrative error.
4 Q. Okay. Do you remember that she
5 called you because her husband was going in
6 for cancer treatment, and he didn't have
7 health coverage because Absolute had cut his
8 benefits off?
9 A. I don't recall that conversation,
10 but, you know, I'm not saying that it -- that
11 that didn't happen. I just don't recall it.
12 Q. You do recall many conversations with
13 Mary Piehler after her termination about her
14 health benefits; right?
15 A. Her health benefits -- benefits
16 specifically?
17 Q. Yes.
18 A. I mean, I just -- I just don't -- I
19 don't recall the specifics of -- of health
20 benefit questions or conversations.
21 Q. Or benefits generally? Do you
22 remember a number of calls with Mary Piehler
23 about benefits generally?
24 A. Sorry, what -- can you repeat the
25 question.

81 (Pages 318 to 321)

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D. Berardo

Q. Yes. I believe you testified earlier that you remember a number of calls with Ms. Piehler after her termination about her benefits.

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. Correct?

A. I don't -- I don't know if I said that. There was a number of calls with Mary Piehler after when we were trying to negotiate a settlement.

Q. And you don't remember the fact that you had cut off her husband's health insurance who had cancer?

A. I don't recall. If -- if that did happen, it -- it would have been an administrative error and been rectified immediately.

Q. You seem to -- do you have -- do you have difficulty recalling conversations with people?

MR. SULLIVAN: Objection to form.

THE WITNESS: Yes, five years ago in the past, I would. Five years in the past,

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I would, yes.

BY MR. THOMAS:

Q. Even something like being responsible for cutting off somebody's medical coverage for their husband who has cancer?

MR. SULLIVAN: Objection to form.

BY MR. THOMAS:

Q. That would sort of slip by?

MR. SULLIVAN: Objection to form.

THE WITNESS: I -- I -- I don't know what you're asking me. If you can repeat the question.

BY MR. THOMAS:

Q. Yeah. Are you -- are you the type of person who would forget the fact that your HR department cut off health benefits for an employee who you fired and whose husband was relying on them for his cancer treatments?

MR. SULLIVAN: Objection to form.

THE WITNESS: Are you asking me five -- four years later if I would remember that?

BY MR. THOMAS:

Q. Yeah.

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D. Berardo

A. It's possible that I wouldn't, four years after the fact.

Q. Let's go to Exhibit 93. When you've had a chance to read it, let me know.

A. Sure. Ready.

Q. Okay. Why did you say that you normally don't do exit interviews for this type of circumstance?

A. We don't do exit -- we -- we never do exit interviews for terminations that are initiated by the employer.

Q. Why don't you -- why -- why wouldn't you do those?

A. Most companies don't, from -- from my understanding, best practice, is because the purpose of the exit interviews is to gather information to, you know, help improve the -- you know, it could be the culture or -- or whatever it might be of the company. Generally, terminated employees don't provide constructive -- constructive information, and -- and, generally, we -- we really want to understand the reasons why people are leaving. That's the main purpose of the exit interview.

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D. Berardo

And in this circumstance -- that just wasn't the circumstance in this.

Q. If someone was fired for discriminatory reasons, wouldn't you want to get their input on that --

MR. SULLIVAN: Objection --

BY MR. THOMAS:

Q. -- in their exit interview?

MR. SULLIVAN: Objection to form.

THE WITNESS: In this circumstance, she wasn't terminated for discriminatory reasons.

BY MR. THOMAS:

Q. I'm not -- I'm just asking you, as an HR manager at Absolute, wouldn't you want to know that from an employee, if they thought they were fired for discriminatory reasons?

A. So if I --

MR. SULLIVAN: Objection -- objection to form.

THE WITNESS: If, hypothetically, someone was terminated because of discriminatory reasons, would we want to know about that?

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1 D. Berardo
 2 BY MR. THOMAS:
 3 Q. Yes.
 4 A. Yes -- yes, we would.
 5 Q. And if they felt they were
 6 discriminated for discriminatory reasons,
 7 wouldn't you want to know that too?
 8 MR. SULLIVAN: Objection to form.
 9 THE WITNESS: Yes, we would want to
 10 know that. At least, I would want to know
 11 that.
 12 BY MR. THOMAS:
 13 Q. Did you ever ask that of Ms. Piehler?
 14 MR. SULLIVAN: Objection to form.
 15 THE WITNESS: No, it's not a -- not a
 16 question that -- that we generally ask.
 17 BY MR. THOMAS:
 18 Q. All right. I have -- let me just
 19 take a quick look here. All right. I have
 20 nothing further at this time.
 21 MR. SULLIVAN: Take a break?
 22 MS. LESTRADE: Yeah.
 23 MR. SULLIVAN: All right. We're
 24 going to take a --
 25 MS. LESTRADE: Probably just --

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1 D. Berardo
 2 BY MS. LESTRADE: Sure.
 3 Q. I just ask that you -- you -- we
 4 don't take a break while there is a question
 5 pending.
 6 I would like you to turn to
 7 Exhibit 67. You reviewed this document in
 8 detail earlier today. You could --
 9 A. Yes.
 10 Q. -- review it a little further, if you
 11 want to just refresh yourself.
 12 A. I recall the document.
 13 Q. Okay. Does this survey provide you
 14 with any reason to believe that Todd Awtry or
 15 Thomas Kenny discriminated against Mary
 16 Piehler?
 17 A. Absolutely --
 18 MR. THOMAS: Objection.
 19 THE WITNESS: Absolutely not.
 20 BY MS. LESTRADE:
 21 Q. Does anything in this survey provide
 22 you with any reason to believe that Thomas
 23 Kenny or Todd Awtry discriminated against
 24 older employees?
 25 A. Absolutely not.

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1 D. Berardo
 2 MR. SULLIVAN: -- ten-minute break or
 3 so.
 4 MS. LESTRADE: More than that.
 5 MR. SULLIVAN: Okay.
 6 MR. THOMAS: Okay.
 7 VIDEOGRAPHER: Going off the record.
 8 MS. LESTRADE: Yeah.
 9 VIDEOGRAPHER: The time is 6:55.
 10 (PROCEEDINGS RECESSED AT 6:55 P.M.)
 11 (PROCEEDINGS RECONVENED AT 7:14 P.M.)
 12 VIDEOGRAPHER: Back on the record.
 13 The time is 7:14.
 14 EXAMINATION BY
 15 MS. LESTRADE:
 16 Q. Good evening, Mr. Berardo. As you
 17 know, my name is Laura Lestrade. I represent
 18 the defendants in this action, and I'm going
 19 to be asking you some questions. The same
 20 rules apply; if you need to take a break, just
 21 let me know, and we'll try to accommodate
 22 that. Just I --
 23 MR. THOMAS: Laura, can you speak up
 24 just a little bit. Because I'm having a
 25 little trouble hearing you.

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1 D. Berardo
 2 MR. THOMAS: Objection.
 3 BY MS. LESTRADE:
 4 Q. Did this survey provide you with any
 5 reason to believe that Todd Awtry or Thomas
 6 Kenny discriminated against older employees?
 7 MR. THOMAS: Objection.
 8 THE WITNESS: Absolutely not.
 9 BY MS. LESTRADE:
 10 Q. Did this survey provide you any
 11 reason to believe that Todd Awtry or Thomas
 12 Kenny treated women differently in terms of
 13 communicating company strategies or
 14 initiatives?
 15 A. Absolutely not.
 16 MR. THOMAS: Objection.
 17 THE WITNESS: Absolutely not.
 18 BY MS. LESTRADE:
 19 Q. Did this survey provide you with any
 20 reason to believe that Todd Awtry or Thomas
 21 Kenny treated older people differently in
 22 terms of communicating company strategies or
 23 initiatives?
 24 MR. THOMAS: Objection.
 25 THE WITNESS: Absolutely not.

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D. Berardo

BY MS. LESTRADE:

Q. We discussed earlier that Ms. Piehler raised some concerns with you concerning -- about her treatment at Absolute. Did any of the concerns raised by Ms. Piehler involve sexual harassment?

A. Never.

MR. THOMAS: Objection.

BY MS. LESTRADE:

Q. Did any of the concerns raised by Ms. Piehler involve discrimination of any kind?

A. Never.

BY MS. LESTRADE:

Q. Did any --

MR. THOMAS: Objection.

BY MS. LESTRADE:

Q. -- of the concerns raised by Ms. Piehler involve crimes, criminal activity?

A. Never.

Q. Or fraud or --

MR. THOMAS: Objection.

BY MS. LESTRADE:

Q. -- embezzlement?

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D. Berardo

A. No.

Q. Did any of Ms. Piehler's complaints give rise to a duty to investigate those complaints?

A. No.

MR. THOMAS: Objection.

BY MS. LESTRADE:

Q. Can I have you look at Exhibit 21 again. If you could turn to it in the book.

A. Sure. Okay.

Q. I'm going to direct your attention to the first paragraph. And the one, two, three, four -- fifth line down towards the end where it -- it says:

We did not launch a corporate investigation in my CER, who I identified as having a part-time job during the day when Absolute is paying him to be here hunting business in the northeast. We continue to pay him at full value." Are you familiar with that -- do you -- do you know what Ms. Piehler was referring to there?

A. I remember a situation --

MR. THOMAS: Objection.

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THE WITNESS: I remember a situation where an employee was away at lunchtime for a period of time, and it was determined that he was -- he was teaching a fitness class or something -- something -- something to that effect.

BY MS. LESTRADE:

Q. Was an inquiry done into this situation?

A. I don't --

MR. THOMAS: Objection.

THE WITNESS: I don't recall the specifics of how -- how much we investigated. We definitely did investigate, and it was determined that he was essentially just leaving on his lunch hour.

BY MS. LESTRADE:

Q. M'mm-hmm.

A. So nothing further was done. Because it was -- it -- it wasn't deemed as inappropriate.

Q. And there was some testimony earlier about an allegation that Todd Awtry shared

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performance reviews of his reports with everyone on his team. Was it -- did he -- did he share the reviews themselves?

A. No. From my recollection --

MR. THOMAS: Objection.

THE WITNESS: From my recollection, it was the -- it was the ratings on those reviews in -- in a spread -- spreadsheet that he had pasted in an email.

BY MS. LESTRADE:

Q. M'mm-hmm. Okay. I'm going to have you look at Exhibits 62, 63, 64, and 66.

A. Starting with 62, sorry?

Q. 62, 63, 64, and 66.

A. Okay.

Q. Just briefly, just if you could focus on the review periods for each review.

A. Sure. Through -- sorry, through 64?

Q. 62, 63, 64, and 66.

A. And 66. Okay.

Q. Did Todd Awtry prepare performance reviews for Mary Piehler for each evaluation period that he supervised her?

A. So that --

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MR. THOMAS: Objection.

THE WITNESS: Let me quickly review again.

BY MS. LESTRADE:

Q. M'mm-hmm.

A. Yes, with the exception of the last six months, because the review period -- the review period hadn't started by the time Mary exited.

Q. Okay. And if you look at Exhibit 62 --

A. Okay.

Q. -- if you look at the reviewer comments, most of the reviewer comments say: I only had six months visibility to observe the competency."

Is that correct?

A. That's correct.

Q. Are you aware whether Mr. Awtry gave that same review comment for his other reports during that time -- that time frame?

A. Yeah, from -- from my recollection --

MR. THOMAS: Objection.

THE WITNESS: From my recollection,

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this is -- he -- he copy and pasted the same "I only had six months visibility to observe this competency" for all his direct reports during that review period.

BY MS. LESTRADE:

Q. And his direct reports during that review period, do you remember who they were?

A. They would --

MR. THOMAS: Objection.

THE WITNESS: They would have been the regional directors. Specifically -- I don't remember specifically.

BY MS. LESTRADE:

Q. So it was all regional directors that reported to him at -- at that time?

MR. THOMAS: Objection.

THE WITNESS: In --

MR. THOMAS: Objection.

THE WITNESS: In North America, yeah.

BY MS. LESTRADE:

Q. M'mm-hmm. Regional directors and/or area vice presidents?

A. Yes. Yeah. They were kind of one and the same. Some people were AVP; some

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people were regional directors. Yes.

Q. When Mary Piehler complained about not having received a performance review, did it require an investigation by you?

A. Not a formal --

MR. THOMAS: Objection.

THE WITNESS: Not a -- it wouldn't -- it wouldn't set off a formal investigation, no.

BY MS. LESTRADE:

Q. Do you think Mary Piehler was treated unfairly by Absolute?

A. I do --

MR. THOMAS: Objection.

THE WITNESS: I do not.

BY MS. LESTRADE:

Q. And in your -- as an -- as an HR director at Absolute during that time frame, do you believe -- would it be appropriate for an employee to be terminated for repeatedly disagreeing with her manager on business issues?

MR. THOMAS: Objection.

THE WITNESS: I -- I would say

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that -- that would be a conversation I would have with the manager, and -- and it -- it would be a valid reason to terminate someone, yes.

BY MS. LESTRADE:

Q. Can you turn to Exhibit 17, please. And on the third page, which is DEFS02585, in this email from you to Ms. Piehler, Ms. Piehler states -- at three lines up from this first full paragraph, she --

A. Yeah.

Q. -- says:

I am not attempting to overreact. I am covering myself in case this witch-hunt continues in FY15."

Do you know what she -- did you understand what she meant by "this witch-hunt"?

MR. THOMAS: Objection.

THE WITNESS: I would only be speculating what I -- what I thought back then.

BY MS. LESTRADE:

Q. M'mm-hmm.

MR. THOMAS: Objection.

85 (Pages 334 to 337)

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BY MS. LESTRADE:

Q. Well, let me -- did you consider the investigation into the DOE commission payments to be a witch-hunt?

A. Absolutely not, no.

MR. THOMAS: Objection.

BY MS. LESTRADE:

Q. Are you aware of any actions by Todd Awtry that cause you to think that he discriminated against Mary Piehler on the basis of age or sex?

A. Absolutely --

MR. THOMAS: Objection.

THE WITNESS: Absolutely not.

BY MS. LESTRADE:

Q. Are you aware of any actions by Thomas Kenny that cause you to think that he discriminated against Mary Piehler on the basis of age or sex?

MR. THOMAS: Objection.

THE WITNESS: Absolutely not.

BY MS. LESTRADE:

Q. Are you aware of any actions by Geoff Haydon that cause you to think that he

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discriminated against Mary Piehler on the basis of age or sex?

MR. THOMAS: Objection.

THE WITNESS: Absolutely not.

BY MS. LESTRADE:

Q. Are you aware of any actions by anyone at Absolute that cause you to think that Absolute discriminated against Mary Piehler on the basis of age or sex?

A. Not that I --

MR. THOMAS: Objection.

THE WITNESS: Yeah, not that I recall, no.

BY MS. LESTRADE:

Q. As the head of HR, were you responsible for the recruiting function?

A. Yeah, the recruiting function --

MR. THOMAS: I didn't hear -- sorry, what was that? I didn't hear for the...

BY MS. LESTRADE:

Q. I said as -- as the head of HR, were you responsible for the recruiting function?

MR. THOMAS: Objection.

THE WITNESS: Yes, the recruiting

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D. Berardo

function rolled up to me. Reported in to me. Yes.

BY MS. LESTRADE:

Q. Were you ever given any instruction by anyone at Absolute that Absolute wanted to focus on hiring younger or male employees?

A. Never.

Q. Did you ever give any such instruction to --

MR. THOMAS: Objection.

BY MS. LESTRADE:

Q. -- your -- to the recruiters who reported to you?

A. Absolutely not.

Q. Did --

MR. THOMAS: Objection.

BY MS. LESTRADE:

Q. Did you ever give any such instruction to internal recruiters that Absolute used in finding candidates for employment?

A. Absolutely not.

MR. THOMAS: Objection.

BY MS. LESTRADE:

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Q. Was is it Absolute's policy to hire younger and male employees?

A. It was not.

MR. THOMAS: Objection.

BY MS. LESTRADE:

Q. Yeah. Did you ever hear Geoff Haydon say that he wanted to get rid of older employees?

A. Never.

Q. Did you --

MR. THOMAS: Objection.

BY MS. LESTRADE:

Q. Did you ever hear Geoff Haydon say that he wanted to get rid of female employees?

A. Never.

Q. Did you --

MR. THOMAS: Objection.

BY MS. LESTRADE:

Q. -- ever hear Geoff Haydon say he wanted to hire male employees?

A. Never.

MR. THOMAS: Objection.

BY MS. LESTRADE:

Q. Did you ever hear Geoff say -- Haydon

86 (Pages 338 to 341)

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1 D. Berardo
 2 say he wanted to hire young employees?
 3 A. No. Never.
 4 MR. THOMAS: Objection.
 5 BY MS. LESTRADE:
 6 Q. Did Geoff Haydon express any hiring
 7 criteria for people he wanted to join
 8 Absolute?
 9 MR. THOMAS: Objection.
 10 THE WITNESS: Not to the -- not to
 11 the best of my recollection. The decisions
 12 were generally left in the hands of the
 13 hiring managers.
 14 BY MS. LESTRADE:
 15 Q. M'mm-hmm. Did Geoff Haydon have a
 16 vision for changing the business direction of
 17 the company?
 18 A. Yes.
 19 MR. THOMAS: Objection.
 20 THE WITNESS: Yes. That's -- I think
 21 that's why he came into the company.
 22 BY MS. LESTRADE:
 23 Q. M'mm-hmm.
 24 A. Yeah.
 25 Q. And what -- what kinds of business

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1 D. Berardo
 2 was he looking to -- what kind of business was
 3 he looking to turn Absolute into?
 4 MR. THOMAS: Objection.
 5 THE WITNESS: So I -- I can just
 6 answer from an HR perspective --
 7 BY MS. LESTRADE:
 8 Q. M'mm-hmm.
 9 A. -- but -- but my observation is that,
 10 you know, he wanted to turn Absolute into a
 11 world-class organization and wanted -- wanted
 12 to expand our reach, our revenue, improve our
 13 products, and -- and -- you know, essentially,
 14 that's what I recall.
 15 Q. Okay. I would like you to take a
 16 look at -- again, at Exhibit 21. Actually,
 17 first, look at Exhibit 17.
 18 A. Okay.
 19 Q. In -- on the third page, 2585,
 20 Ms. Piehler is complaining to you about Todd
 21 Awtry; is that correct?
 22 A. Let me --
 23 MR. THOMAS: Objection.
 24 THE WITNESS: Let me just quickly --
 25 quickly read it again. Yeah, the subject

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1 D. Berardo
 2 was Todd Awtry.
 3 BY MS. LESTRADE:
 4 Q. Okay. And in the very first line of
 5 the last -- the -- the -- actually, it's the
 6 second-to-last paragraph. She says:
 7 I have seen published numbers that
 8 are wrong."
 9 Do you see that?
 10 A. Yes, I do.
 11 Q. Okay. And -- and then on page 2584
 12 at the bottom, you say:
 13 Hi, Mary. Can you give me more
 14 colour into your second-to-last paragraph."
 15 Do you see that?
 16 A. I do, yes.
 17 Q. Okay. And the second-to-last
 18 paragraph is on the preceding page where she
 19 talks about published numbers that are wrong?
 20 A. Right. Yeah.
 21 Q. Okay. So if you go back to
 22 Exhibit 21 --
 23 A. Okay.
 24 Q. -- the first line, she says:
 25 Daniel, in response to your request,

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1 D. Berardo
 2 here is a little colour in the comments I
 3 made to you."
 4 And much of this email is Ms. Piehler
 5 forwarding to you email correspondence that
 6 she had with Dan Miller about the reporting of
 7 sales numbers. Is that correct?
 8 A. Yes.
 9 Q. Okay. Who was Dan Miller?
 10 MR. THOMAS: Objection.
 11 THE WITNESS: Dan Miller was a -- he
 12 worked in the sales ops team. I'm not sure
 13 what his position was, but he worked in the
 14 sales operations team.
 15 BY MS. LESTRADE:
 16 Q. And was he responsible for reporting
 17 the numbers?
 18 MR. THOMAS: Objection.
 19 THE WITNESS: I don't -- I don't
 20 recall if he was responsible for reporting
 21 the numbers, but he was responsible for --
 22 for -- for gathering the numbers. And --
 23 and, perhaps, yeah, reporting them to --
 24 you know, to, like, the finance team.
 25 BY MS. LESTRADE:

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Q. M'mm-hmm. Okay. Was Todd Awtry responsible for gathering the numbers for the finance team?

A. He was not, no.

MR. THOMAS: Objection.

THE WITNESS: Not to the -- not to the best of my recollection.

BY MS. LESTRADE:

Q. Okay. Mr. Berardo, I would -- I would like you to look again at Exhibit 81.

A. Okay.

Q. On the second page.

A. Okay.

Q. There was some suggestion earlier that -- that a Tom Ioele may have been hiding in the conference room where the termination took place. Can you look at three lines from the bottom of that email.

A. Three lines from the bottom?

Q. I mean, not of the email.

A. Oh.

Q. Of the -- on the page that's DEFS07446.

A. Right. So it says:

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Tom came into the..."

Where it says:

Tom came into the room after Mary left the parking lot, and we debriefed what had taken place with Todd and Daniel?"

Q. Yeah. Okay. Does that -- does that refresh your recollection -- recollection at all that Mr. Ioele was, in fact, not in the room during the termination meeting and was not, in fact, hiding in the room?

MR. THOMAS: Objection.

THE WITNESS: I don't -- I don't -- I don't recall the -- I don't recall vivid memories of the -- of the call. But, I mean, I -- when the -- this termination note was sent to me, I mean, I reviewed it, and -- and -- and I said that it was accurate. So -- so, you know, three years -- three and a half years ago me would have said that this is -- this is what happened.

BY MS. LESTRADE:

Q. Okay. I have no more questions.

EXAMINATION BY

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MR. THOMAS:

Q. Mr. Berardo, where -- why wasn't Mr. Ioele in the room, like the notes say?

A. Why wasn't?

Q. Why wasn't he?

A. Why wasn't he in the room? Well, we just -- from my recollection, we just asked one person from the -- from the company to be in the room. So I don't know why he wasn't in the room.

Q. Why did you ask only one person?

A. That's -- that was all that was really necessary.

Q. Why was -- why was he necessary to be there at all, then?

A. I -- I don't know. You -- you would have to ask Catherine. I -- I don't know why -- why Catherine brought him to -- to the meeting.

Q. And you don't know why Catherine kept him out -- kept him outside of Mary's sight until after the meeting was over and then brought him in; right?

A. I don't -- I don't recall why, no.

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Q. And you don't know where he was situated so that Mary couldn't see him during the meeting; correct? Or before the meeting?

A. Well, it says here:

Tom came into the room after Mary left."

So according to these notes, Tom wasn't in the room. I don't know where he was situated before --

Q. Do you know where he was?

A. I don't, no.

Q. And do you know why he was somewhere where Mary couldn't see him, apparently?

A. He was outside the room, because he wasn't part of the termination meeting.

Q. That wasn't my question.

A. Sorry, can you repeat your question.

MR. THOMAS: Yes. Could the court reporter read it back.

(REPORTER READ BACK)

THE WITNESS: I -- I don't know -- I don't know why he was outside the room.

BY MR. THOMAS:

Q. Nothing further.

1 D. Berardo
2 VIDEOGRAPHER: Okay. This concludes
3 today's deposition. Going off record at
4 7:40.
5
6

7 (PROCEEDINGS ADJOURNED AT 7:40 P.M.)
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1
2 REPORTER CERTIFICATION

3 I, Jessica D. Archibald, Official
4 Reporter in the Province of British Columbia,
5 Canada, BCSRA No. 607, do hereby certify:
6

7 That the proceedings were taken down
8 by me in shorthand at the time and place
9 herein set forth and thereafter transcribed,
10 and the same is a true and correct and
11 complete transcript of said proceedings to the
12 best of my skill and ability.
13

14 IN WITNESS WHEREOF, I have hereunto
15 subscribed my name this 22nd day of May 2019.
16

17
18
19
20
21 Jessica D Archibald
22 Official Reporter, CSR(A)
23
24
25

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